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<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS))) VS.) NO. 12-CV-128) (DST, RMC, RLW)) ERIC H. HOLDER, JR.,) In his official) Capacity as Attorney) General of the United) States, ET AL)</p> <p>***** ORAL DEPOSITION OF MAJOR FORREST MITCHELL *****</p> <p>ANSWERS AND DEPOSITION OF MAJOR FORREST MITCHELL, a witness called by the United States taken before Janalyn Reeves, Certified Shorthand Reporter for the State of Texas, on the 15th day of June, 2012, between the hours of 9:30 a.m. and 5:46 p.m., in the offices the United States Department of Justice, 816 Congress Street, Suite 1000, Austin, Texas, pursuant to the agreement of counsel for the respective parties as hereinafter set forth.</p>	<p>INDEX</p> <table> <thead> <tr> <th></th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>3 Appearances</td> <td style="text-align: right;">2</td> </tr> <tr> <td>4 MAJOR FORREST MITCHELL</td> <td></td> </tr> <tr> <td>5 Examination by Mr. Gear Maranzano</td> <td style="text-align: right;">5</td> </tr> <tr> <td>5 Clarifying Examination by Mr. Rosenberg</td> <td style="text-align: right;">146</td> </tr> <tr> <td>6 Further Examination by Mr. Gear.....</td> <td style="text-align: right;">147</td> </tr> <tr> <td>6 Examination by Mr. Rosenberg.....</td> <td style="text-align: right;">210</td> </tr> <tr> <td>7 Examination by Mr. Sweeten.....</td> <td style="text-align: right;">215</td> </tr> <tr> <td>7 Further Examination by Mr. Gear.....</td> <td style="text-align: right;">225</td> </tr> <tr> <td>8 Further Examination by Mr. Rosenberg..</td> <td style="text-align: right;">238</td> </tr> <tr> <td>9 Signature and Changes</td> <td style="text-align: right;">245</td> </tr> <tr> <td>10 Reporter's Certificate</td> <td style="text-align: right;">247</td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </tbody> </table>		PAGE	3 Appearances	2	4 MAJOR FORREST MITCHELL		5 Examination by Mr. Gear Maranzano	5	5 Clarifying Examination by Mr. Rosenberg	146	6 Further Examination by Mr. Gear.....	147	6 Examination by Mr. Rosenberg.....	210	7 Examination by Mr. Sweeten.....	215	7 Further Examination by Mr. Gear.....	225	8 Further Examination by Mr. Rosenberg..	238	9 Signature and Changes	245	10 Reporter's Certificate	247	11		12		13		14		15		16		17		18		19		20		21		22		23		24		25															
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<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFF, STATE OF TEXAS: OFFICE OF THE ATTORNEY GENERAL: By: MR. PATRICK SWEETEN - and - MR. REYNOLDS BRISSENDEN 209 West 14th Street Austin, Texas 78701 PH: (512) 936-6432</p> <p>3 FOR THE DEFENDANT: DEPARTMENT OF JUSTICE By: MR. BRUCE GEAR - and - MR. VICTOR WILLIAMSON 950 Pennsylvania Avenue, NW Room 7161 NWB Washington, DC 20530 PH: (202) 305-0185</p> <p>4 FOR THE INTEVENORS: DECHERT, LLP By: MR. EZRA ROSENBERG 902 Carnegie Center Suite 500 Princeton, New Jersey 08540 Ph: (609) 955-3259</p>	<p>1 EXHIBITS</p> <table> <thead> <tr> <th></th> <th style="text-align: right;">NO.</th> <th style="text-align: right;">DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>2</td> <td style="text-align: right;">580</td> <td>Notice of Deposition</td> <td style="text-align: right;">16</td> </tr> <tr> <td>3</td> <td style="text-align: right;">581</td> <td>Letter</td> <td style="text-align: right;">20</td> </tr> <tr> <td>4</td> <td style="text-align: right;">582</td> <td>Objections and to Notice</td> <td style="text-align: right;">27</td> </tr> <tr> <td>5</td> <td style="text-align: right;">583</td> <td>Election Code Prosecution</td> <td style="text-align: right;">59</td> </tr> <tr> <td>6</td> <td style="text-align: right;">584</td> <td>Press Release</td> <td style="text-align: right;">98</td> </tr> <tr> <td>7</td> <td style="text-align: right;">585</td> <td>Spreadsheet</td> <td style="text-align: right;">99</td> </tr> <tr> <td>8</td> <td style="text-align: right;">586</td> <td>Press Release</td> <td style="text-align: right;">108</td> </tr> <tr> <td>9</td> <td style="text-align: right;">587</td> <td>Press Release</td> <td style="text-align: right;">109</td> </tr> <tr> <td>10</td> <td style="text-align: right;">588</td> <td>Press Release</td> <td style="text-align: right;">115</td> </tr> <tr> <td>11</td> <td style="text-align: right;">589</td> <td>Press Release</td> <td style="text-align: right;">120</td> </tr> <tr> <td>12</td> <td style="text-align: right;">590</td> <td>Press Release</td> <td style="text-align: right;">128</td> </tr> <tr> <td>13</td> <td style="text-align: right;">591</td> <td>Report</td> <td style="text-align: right;">177</td> </tr> <tr> <td>14</td> <td style="text-align: right;">592</td> <td>Article</td> <td style="text-align: right;">177</td> </tr> <tr> <td>15</td> <td style="text-align: right;">593</td> <td>Article</td> <td style="text-align: right;">196</td> </tr> <tr> <td>16</td> <td style="text-align: right;">594</td> <td>Resource Witness Testimony</td> <td style="text-align: right;">204</td> </tr> <tr> <td>17</td> <td style="text-align: right;">595</td> <td>Document</td> <td style="text-align: right;">205</td> </tr> </tbody> </table>		NO.	DESCRIPTION	PAGE	2	580	Notice of Deposition	16	3	581	Letter	20	4	582	Objections and to Notice	27	5	583	Election Code Prosecution	59	6	584	Press Release	98	7	585	Spreadsheet	99	8	586	Press Release	108	9	587	Press Release	109	10	588	Press Release	115	11	589	Press Release	120	12	590	Press Release	128	13	591	Report	177	14	592	Article	177	15	593	Article	196	16	594	Resource Witness Testimony	204	17	595	Document	205
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<p>1 MAJOR FORREST MITCHELL, 2 having being first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. GEAR: 5 Q. This is the deposition of Major Forrest Mitchell 6 in the matter of Texas V Holder, US DC for DC docket No. 7 1:11 CV 128. Good morning, Major Mitchell. 8 A. Good morning. 9 Q. Could you state your name and spell your name for 10 the record? 11 A. My name is Forrest Mitchell, F-O-R-R-E-S-T, 12 M-I-T-C-H-E-L-L. 13 Q. My name is Bruce Gear. I'm with the Department 14 of Justice. I represent Eric Holder who is the United 15 States Attorney General. And could everybody else 16 introduce themselves? 17 MR. SWEETEN: Patrick Sweeten with the Texas 18 Attorney General's office on the behalf of the State of 19 Texas and on behalf of the witness, Forrest Mitchell. 20 MR. BRISSENDEN: Reynolds Brissenden for the 21 State of Texas and the witness. 22 MR. ROSENBERG: Ezra Rosenberg from 23 Dechert LLP representing the Legislative Conference of 24 NAACP branches and the Mexican American legislative 25 caucus.</p>	<p>1 your answers. It's important to answer verbally because 2 a nonverbal answer is hard to catch on a record and the 3 court reporter needs to hear your response. Do you 4 understand that? 5 A. Yes, sir. 6 Q. Okay. So -- which may happen during this 7 deposition if I ask you a question you don't understand, 8 then, you know, don't hesitate to ask me to repeat it or 9 don't hesitate to ask me to try to restate it so that 10 you can understand it. This is my opportunity to 11 understand what you know. So I'm going to be asking a 12 lot of questions, none of them are intended to be 13 personal. It's intended to get to exactly that, what do 14 you know. Do you understand that? 15 A. Yes, sir. 16 Q. All right. Is there any reason you think you may 17 not be able to answer completely and truthfully today? 18 A. No, sir. 19 Q. Are you taking any type of drugs or medication 20 that may affect your ability to understand the questions 21 that I ask or provide answers today? 22 A. No, sir. 23 Q. At any point during this deposition, if you would 24 like to take a break, just what I would ask you to do is 25 work through the question that's before you, complete</p>
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<p>1 MR. WILLIAMSON: Victor Williamson from the 2 US Department of Justice. 3 BY MR. GEAR: 4 Q. Now, you've been sworn in under oath. You 5 understand that you've been sworn in? 6 A. Yes, sir. 7 Q. That you are under oath. That you're here today 8 to provide testimony and that you're expected to testify 9 completely and as fully as possible. You understand 10 that? 11 A. Yes, sir, I do. 12 Q. Okay. So I just want to start off with a couple 13 of ground rules so that we understand exactly what we're 14 doing. I'm going to be asking you questions. You're 15 going to be providing the answers and so it's very 16 important that during the course of the deposition you 17 allow me to get out my question and then I will allow 18 you to get out your answer completely and fully. And at 19 anytime during this deposition if you believe you recall 20 something or you stated something in accurately, let me 21 know and I'll allow do you correct that on the record. 22 Do you understand? 23 A. Yes, sir. 24 Q. Okay. You know, so it's important that you allow 25 me to finish my questions and I'll allow you to finish</p>	<p>1 that, let me know that you need to take a break and then 2 I'll allow you do to that. Is that understandable? 3 A. Yes, sir. 4 Q. Okay. And what may happen during the course of 5 this deposition, there may be objections, there may be 6 discussions between the attorneys. I just ask that if 7 there's a question before you that you answer that 8 question unless you're directed otherwise by your 9 attorney. Do you understand that? 10 A. Yes, sir. 11 Q. Okay. Now, during the course of this deposition, 12 we're going to be talking about voter ID, photo ID. And 13 I would ask that you consider those terms 14 interchangeably throughout this deposition. I want you 15 to interpret those terms broadly, to mean that the 16 requirement that a voter present a form of 17 identification, whether it has a photo or otherwise, 18 when voting in person before being permitted to vote 19 with a regular ballot. Do you understand that? 20 A. Yes, sir. 21 Q. If I refer to you, I'm asking you a question 22 about you as a member of the special investigations unit 23 of the law enforcement division of the office of the 24 Texas Attorney General's office. Do you understand 25 that?</p>



<p style="text-align: center;">9</p> <p>1 A. Yes, sir. 2 Q. Okay. If I refer to you, I'm also including any 3 staff that you may supervise, but before your attorney 4 objects to this because we've gone down this road 5 before, I am going to do my best during the course of 6 this deposition to identify when I'm referring to you in 7 your capacity in the special investigations unit or when 8 I'm broadening that definition to include others that 9 may be underneath you or within your office. Do you 10 understand that? 11 A. Yes, sir. 12 Q. Okay. If I say the Texas Attorney General, I 13 mean the Attorney General Greg Abbott. Do you 14 understand that? 15 A. Yes, sir. 16 Q. All right. And we may, as we get into this 17 deposition, we may be talking about the special 18 investigations unit or the office of the attorney 19 general I may use those interchangeably. So would you 20 mind if I use the term SIU for the special 21 investigations unit at times and would you understand 22 that? 23 A. That would be fine, sir. Yes, I will. 24 Q. Okay. So do you understand everything that we've 25 talked about so far?</p>	<p style="text-align: center;">11</p> <p>1 types of cases including public integrity cases, fraud 2 cases, other index crimes and I would testify in 3 criminal proceedings about whatever investigative work 4 that I had done on those cases. 5 Q. And you said, "during your first eight years"?</p> <p>6 A. Correct.<p>7 Q. How long have you been with the office of the 8 attorney general?<p>9 A. In September I will have been there 15 years.<p>10 Q. 15 years. Okay. So after your first eight 11 years, where did you go?<p>12 A. I became the lieutenant of the special 13 investigations unit.<p>14 Q. And that was what time period?<p>15 A. In 2005.<p>16 Q. And the title you just told me you became the?<p>17 A. I became the lieutenant.<p>18 Q. Lieutenant. And was that the lead investigator?<p>19 A. No. It was a supervisory position.<p>20 Q. Supervisor. Okay. So let's focus on 2005. We 21 were still talking about the types of testimony you may 22 have provided. So from 2005 forward, have you been 23 involved in trials where you provided testimony under 24 oath?<p>25 A. I haven't really testified much up until 2010.</p></p></p></p></p></p></p></p></p></p></p></p></p>
<p style="text-align: center;">10</p> <p>1 A. Yes, sir, I do. 2 Q. All right. And are you represented by counsel 3 today? 4 A. Yes, sir. 5 Q. And who is your counsel? 6 A. Patrick Sweeny and -- I'm sorry. 7 MR. BRISSENDEN: Reynolds. 8 A. Reynolds. 9 Q. Have you ever been deposed before? 10 A. No, sir. This is the first time. 11 Q. Have you ever provided testimony at trial? 12 A. Yes, sir. 13 Q. And I know you're an investigator and you 14 probably have provided quite a bit of testimony. But 15 generally, talk to me and tell me about what type of 16 testimony you provided in the past? 17 A. Well, for the first year -- first eight years 18 with the Texas Attorney General's office I worked in the 19 prosecutor assistance division. And one of my charges 20 was to investigate capital murder cases which occurred 21 in the State of Texas. And so I would testify about my 22 investigative work on those kinds of cases. 23 Q. And those dealt specifically with capital murder 24 cases? 25 A. Yes, sir. During that time I also worked other</p>	<p style="text-align: center;">12</p> <p>1 Q. 2010. Okay. And in 2010 can you tell me a 2 little bit about that testimony? 3 A. Yes, sir. I was one of the investigators who 4 assisted on the YFZ case, which occurred out in 5 Schleicher County. 6 Q. YFZ? 7 A. YFZ. 8 Q. Is that short for something else? 9 A. Yearning for Zion. 10 Q. Yearning for Zion, okay. And tell me a little 11 bit about that case? 12 A. That was a case involving men who had married 13 under age women and had fathered children with those 14 under age women. And had married multiple women in 15 Schleicher County. 16 Q. And so as I understand your testimony, that did 17 not involve election code violations? 18 A. No, sir. 19 Q. Something completely different? 20 A. Yes, sir. 21 Q. Have you testified on any matters that involved 22 election code violations? 23 A. No, sir. 24 Q. So other than the YFZ in 2010, have you provided 25 any other testimony at trial, 2005 forward?</p>



<p style="text-align: center;">13</p> <p>1 A. There was one other case that I testified in, but 2 it was in a suppression hearing.</p> <p>3 Q. And when you say suppression hearing, what do you 4 mean?</p> <p>5 A. It was a suppression hearing on a search warrant 6 that was run.</p> <p>7 Q. And did that have anything to do with election 8 code violations?</p> <p>9 A. No, sir.</p> <p>10 Q. And for the record, what was the issue on the 11 suppression hearing?</p> <p>12 A. The scope of the search warrant and items seized.</p> <p>13 Q. And you had to appear in court and provide 14 testimony?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And about what time period was that?</p> <p>17 A. I would say it's -- it was either 2006 or 2007.</p> <p>18 Q. Okay. And just so I'm clear now, from 2005 19 forward, I've asked you if you've provided any testimony 20 regarding election code violations. I believe the 21 answer has been no?</p> <p>22 A. That's correct, sir.</p> <p>23 Q. Okay. All right. And so what did you do to 24 prepare for the deposition today?</p> <p>25 A. I reviewed my spread sheets that I prepared.</p>	<p style="text-align: center;">15</p> <p>1 Q. In addition to the indictments, judgments and 2 statements?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And when you were talking about preparing 5 or discovery, what were you referencing?</p> <p>6 A. The discovery order asked for all documents 7 dealing with voter fraud.</p> <p>8 Q. Okay. And what did you do in response to the 9 discovery?</p> <p>10 A. I reviewed my personal e-mail, my work e-mail and 11 documents that I had electronically saved on our 12 network.</p> <p>13 Q. Did you produce any of those to your attorney?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And when did you produce those?</p> <p>16 A. It's been an ongoing process. I started 17 producing them early part of last week.</p> <p>18 MR. GEAR: Patrick, do you know if these 19 have been produced to us at this point?</p> <p>20 MR. SWEETEN: I know that we produced 21 sentences, judgments, indictments, his spread sheet, 22 everything that was discussed there. And I think what 23 we've set forth in our objections, whatever we've set 24 forth in our objections we produced all that.</p> <p>25 MR. GEAR: Okay. Because I don't actually</p>
<p style="text-align: center;">14</p> <p>1 Q. Okay. And were you -- did you review those with 2 anyone else present?</p> <p>3 A. I reviewed those with counsel here.</p> <p>4 Q. Anyone else?</p> <p>5 A. Huh-uh. Oh, I'm sorry. John McKenzie as well.</p> <p>6 Q. John McKenzie is also counsel?</p> <p>7 A. Yes, sir.</p> <p>8 Q. When did you review the spread sheets?</p> <p>9 A. Last night and part of last week.</p> <p>10 Q. Did you have any other material with you while 11 reviewing the spread sheets?</p> <p>12 A. Well, yes. Indictments and judgments and 13 sentences.</p> <p>14 Q. And did you produce the indictments, judgments 15 and sentences to your counsel?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And when did you produce those?</p> <p>18 A. I believe last week.</p> <p>19 Q. And any other material that you reviewed while 20 looking at the spread sheets?</p> <p>21 A. Are we talking about preparing or providing 22 discovery?</p> <p>23 Q. Well, let's start with preparing for the 24 deposition.</p> <p>25 A. No, it was just really the spread sheets.</p>	<p style="text-align: center;">16</p> <p>1 recall ever seeing any e-mails.</p> <p>2 MR. SWEETEN: I can check on that at a 3 break.</p> <p>4 BY MR. GEAR:</p> <p>5 Q. So we talked about, and we'll get into that a 6 little bit later, but we talked about documents that you 7 reviewed in response to the discovery. Anything else 8 that you may have reviewed?</p> <p>9 A. I can't think of anything else right now.</p> <p>10 Q. Okay.</p> <p>11 (Exhibit No. 580 was marked.)</p> <p>12 BY MR. GEAR:</p> <p>13 Q. I'm showing you what's been marked as 14 Exhibit 580. I ask you to just take a look at that.</p> <p>15 MR. SWEETEN: I would note for the record, 16 that the Attorney General has filed objections and 17 responses to these.</p> <p>18 BY MR. GEAR:</p> <p>19 Q. Just let me know when you've had a chance to look 20 at it.</p> <p>21 A. Yes, sir. Okay, sir.</p> <p>22 Q. All right. I turn your attention to what I 23 believe is Page 5, they're unnumbered, but it starts 24 with documents. Do you see that?</p> <p>25 A. Yes, sir.</p>



<p style="text-align: center;">17</p> <p>1 Q. Okay. And have you reviewed this before, this 2 document?</p> <p>3 A. I do not believe I've seen the one for June 15th.</p> <p>4 Q. All right. You saw an earlier version?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And you reviewed the earlier version?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Would you say that this is substantially similar 9 but for the date, June 15th?</p> <p>10 A. Yes, sir, it looks similar.</p> <p>11 Q. Okay. So directing your attention to paragraph 1 12 under documents, it indicates all documents and 13 communications including but not limited to those among 14 and between the office of the Texas Attorney General. 15 And I goes on to say more. Do you see that paragraph 16 that I'm referring to?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What, if anything, did you do to respond to 19 paragraph 1?</p> <p>20 A. Knowing that --</p> <p>21 MR. SWEETEN: Hold on a minute. When you're 22 answering the question don't reveal communications that 23 you've had with attorneys of our office. Okay? So 24 don't reveal matters of attorney/client privilege. But 25 you can answer otherwise.</p>	<p style="text-align: center;">19</p> <p>1 these depositions. And so he just indicated it was 2 produced to us last night. I don't have the time.</p> <p>3 MR. GEAR: Okay.</p> <p>4 BY MR. GEAR:</p> <p>5 Q. All right. And so I believe your response was 6 that you did not have documents responsive to paragraph 7 No. 1 when it came to communications between the 8 attorney general's office, Secretary of State's office; 9 is that correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you also indicated that you did not have 12 documents responsive to the members of the Texas 13 legislature; is that correct?</p> <p>14 MR. SWEETEN: I'm sorry.</p> <p>15 BY MR. GEAR:</p> <p>16 Q. Paragraph 1; is that correct?</p> <p>17 A. No, sir, I don't have any responsive documents to 18 that.</p> <p>19 MR. SWEETEN: Bruce, I think it's fair to 20 show him his responses when you're going through these. 21 We formally responded to this and I think it would be 22 helpful to him and I think it would make this go faster 23 if you provide him a copy of how we responded because we 24 have listed some documents.</p> <p>25 BY MR. GEAR:</p>
<p style="text-align: center;">18</p> <p>1 BY MR. GEAR:</p> <p>2 Q. And I'm not asking you to reveal communications 3 at this point. I'm just asking you what, if anything, 4 you or anyone else in your office did to determine if 5 there were responsive documents to paragraph 1?</p> <p>6 A. Reviewed my saved files to see if I had anything 7 responsive to SB 14.</p> <p>8 Q. Did you have any documents that were responsive 9 to paragraph 1, communications including but not limited 10 to the office of the Secretary of State, division of 11 elections, members of the Texas Legislature?</p> <p>12 A. Yes, sir. I mean, I didn't have anything 13 responsive to that.</p> <p>14 MR. SWEETEN: Bruce, let me just tell you 15 I've gotten an e-mail from counsel. You asked about, I 16 think there was one remaining document or type of 17 documents you asked about, which was e-mails. I just 18 got an e-mail that indicated that was uploaded last 19 night. So we have produced some e-mails to you from 20 Mitchell and then all the other areas that we talked 21 about have been provided.</p> <p>22 MR. GEAR: Do you know about what time they 23 were uploaded?</p> <p>24 MR. SWEETEN: I don't have that. The 25 attorney was communicating with us in another one of</p>	<p style="text-align: center;">20</p> <p>1 Q. Did you prepare any written response to this 2 notice of deposition?</p> <p>3 A. I think I prepared an e-mail that said, yes, no, 4 yes, no, yes, no.</p> <p>5 MR. SWEETEN: Don't reveal the subject of 6 any e-mails you sent to me or John or Mr. Bruce. Okay?</p> <p>7 BY MR. GEAR:</p> <p>8 Q. Did your assistant prepare any written 9 communication or document to the Department of Justice?</p> <p>10 A. No. 11 (Exhibit No. 581 was marked.)</p> <p>12 BY MR. GEAR:</p> <p>13 Q. I'm showing you what's been marked as 14 Exhibit 581. I'll give you a chance to look at that.</p> <p>15 A. Okay.</p> <p>16 Q. Have you seen Exhibit 581 before?</p> <p>17 A. No, sir.</p> <p>18 Q. Did you assist in preparing Exhibit 581?</p> <p>19 MR. SWEETEN: Do you mean the actual 20 drafting? He's not going to talk about communications 21 we've had regarding documents. So he's not going to 22 answer substantive communications you've had. If you're 23 asking about the drafting, I'll let him answer questions 24 as posed.</p> <p>25 BY MR. GEAR:</p>



<p style="text-align: center;">21</p> <p>1 Q. You indicated that you sent an e-mail saying yes, 2 no, yes, no in response to the notice of depositions and 3 I don't want do you get into privileged communication 4 with your counsel. But was that e-mail sent to your 5 counsel?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And when was that e-mail sent?</p> <p>8 A. Sometime last week.</p> <p>9 Q. And who was it sent to?</p> <p>10 A. John McKenzie.</p> <p>11 Q. Turning your attention to Page 2, last full 12 paragraph where it indicates, "Mr. Mitchell will produce 13 the -- to the Department of Justice convictions and 14 indictments for voter fraud for the time period 15 identified in Exhibit A to Mr. Mitchell's notice by 16 6:00 p.m. on June 8, 2012." It also goes on to say 17 that, "Mr. Mitchell will produce another spread sheet, 18 redacted of personal identifying information, for the 19 309 voter fraud investigations that he maintains in the 20 ordinary course of duties." Do you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. It also indicates that, "we continue to assert 23 our objections as to the production of over 10,000 pages 24 of largely irrelevant documents and maintain our belief 25 that a request calling for such as production far</p>	<p style="text-align: center;">23</p> <p>1 A. Correct.</p> <p>2 Q. Okay. What else would it include?</p> <p>3 A. It also could include affidavits from 4 complainants --</p> <p>5 Q. Okay.</p> <p>6 A. Who forwarded that information to whatever 7 referral agency. It may contain documents such as voter 8 registration records or mail-in ballot applications or 9 poll place combination forms.</p> <p>10 Q. And those documents would have come from the?</p> <p>11 A. Referring agency.</p> <p>12 Q. Referring agency. Okay. Anything else that 13 would be in the files, generally?</p> <p>14 A. In the entire case file would be investigative 15 work product, such as interviews of witnesses.</p> <p>16 Q. Notes?</p> <p>17 A. Notes. Suspect interviews, audio recordings, 18 personal identifying information of witnesses or 19 suspects contacted, additional election records 20 obtained. And each one will generally contain an open 21 case form and a closed case form, along with any sorts 22 of court pleadings such as, indictments or information 23 or the final disposition of the case.</p> <p>24 Q. Okay. And do you agree with what's stated here 25 that these would be irrelevant; in particular,</p>
<p style="text-align: center;">22</p> <p>1 exceeds the scope of discovery." Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Now, when you talk about "10,000 pages of 4 irrelevant documents," can you give me an idea of what 5 you're actually referring to?</p> <p>6 A. Case files.</p> <p>7 Q. And those are case files that regard the spread 8 sheets that you've provided to the defendant, Eric 9 Holder, in this case?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And those case files include conviction records, 12 if any?</p> <p>13 A. Correct.</p> <p>14 Q. They include testimony, if any?</p> <p>15 A. I do not believe the case files would include 16 testimony.</p> <p>17 Q. Okay. Why don't we do it this way. Generally 18 what would the case files include?</p> <p>19 A. The case file would generally contain a referral 20 document from an outside agency.</p> <p>21 Q. Okay.</p> <p>22 A. Such as the Secretary of State's office, a local 23 district attorney's office or county attorney's office.</p> <p>24 Q. Which would initiate the action in the attorney 25 general's office?</p>	<p style="text-align: center;">24</p> <p>1 irrelevant to understanding your spread sheet?</p> <p>2 MR. SWEETEN: That's communication that we 3 provided to you on behalf of the witness. He's not 4 going to comment on what he thinks of the words on the 5 page.</p> <p>6 MR. GEAR: Well, I'm asking you --</p> <p>7 MR. SWEETEN: That's a legal term.</p> <p>8 "Relevance" is a legal term. We're his legal counsel.</p> <p>9 We represent Mr. -- Major Mitchell. And we provided to 10 you what our belief is and his position is. That 11 continues to be his position for you to ask him to 12 characterize our legal interpretation of his words would 13 invade the attorney/client privilege and frankly, is 14 irrelevant. We're representing him in this case. So I 15 object to the question.</p> <p>16 BY MR. GEAR:</p> <p>17 Q. You can answer.</p> <p>18 A. Can you repeat that, sir.</p> <p>19 Q. Can you read back?</p> <p>20 (Requested question was read.)</p> <p>21 MR. SWEETEN: Objection; calls for a legal 22 conclusion. Objection; relevance. You can go ahead and 23 answer.</p> <p>24 A. There are many documents in these case files that 25 don't deal with SB 14 at all.</p>



<p style="text-align: center;">25</p> <p>1 Q. But they deal with the issue of -- in this case 2 referring to your spread sheet, which we'll get to 3 later, refer to the issue of voter fraud? 4 A. In the broad sense, yes. 5 Q. Well, they're from the referring agency, correct? 6 A. Correct. 7 Q. And they're regarding election code violations? 8 A. Correct. 9 Q. And in that, when you say, "the broad sense," 10 they're referring to election code violations referred 11 from a particular agency? 12 A. Correct. 13 Q. To the attorney general's office? 14 A. Yes, sir. 15 Q. And did you complete your answer? I'm sorry. 16 A. I apologize. 17 Q. You were answering and I interrupted you, I 18 think. So were you able to complete your answer on 19 that? 20 A. The large volume of documents deals with all of 21 the election code referrals that this office has 22 received over the years. 23 Q. Okay. And am I understanding correctly that 24 there's also an off-site location where files are 25 maintained?</p>	<p style="text-align: center;">27</p> <p>1 deposition, you indicated electronically, correct? 2 A. Correct. 3 Q. So am I -- is it fair to say that you did not 4 search the paper files to determine if there were any 5 responsive documents? 6 A. I did not search paper files. 7 Q. Okay. And I want to be clear on this when I'm 8 saying "you," I mean you or anyone else within your 9 office? 10 A. Correct. 11 (Exhibit No. 582 was marked.) 12 BY MR. GEAR: 13 Q. Okay. I'm showing you what's been marked as 14 Exhibit 582. I'll give you a chance to take a look at 15 that. Have you had a chance to look at Exhibit 582? 16 A. Yes, sir. 17 Q. And have you seen that exhibit before? 18 A. Yes, sir. 19 Q. Did you assist in preparing the answers on 20 Exhibit 582? 21 A. Can you explain, "prepare"? 22 Q. Did you provide any input on Exhibit 582? 23 MR. SWEETEN: Don't reveal anything you said 24 to us, not one word. You can just say if you've had any 25 effort in drafting that or not and this's all -- that's</p>
<p style="text-align: center;">26</p> <p>1 A. Multiple. 2 Q. Okay. And did you search those off-site 3 locations in response to the notice of deposition? 4 A. Electronically. 5 Q. So they are both electronic files and paper 6 files. Is that your testimony? 7 A. Yes, sir. If I could clarify? 8 Q. Sure, please. 9 A. We have a case management system and what we did 10 was try to determine the location of the closed case 11 files, all of the election code case files which are 12 maintained off-site. 13 Q. So it's the closed case files that are maintained 14 off-site? 15 A. Yes, sir. If I could clarify that as well? 16 Q. Please. 17 A. Due to the large volume of documents, some open 18 case files require that we store them off-site as well. 19 Q. So they're both open and closed files? And would 20 all those -- would the information in those files be 21 maintained both by paper and electronically? 22 A. Only a small portion is maintained 23 electronically. 24 Q. Okay. And so my original question was, did you 25 search those files in response to the notice of</p>	<p style="text-align: center;">28</p> <p>1 all we're going to give them. 2 A. I did not provide any effort in drafting this 3 document. 4 Q. (By Mr. Gear) Okay. And that -- okay. Your 5 counsel referred to a document that would provide a 6 clearer understanding of what you did to respond to the 7 notice of deposition. Would that be the document 8 that -- 9 MR. SWEETEN: Feel free to review the 10 document to the extent you need to. 11 BY MR. GEAR: 12 Q. I mean, if your testimony is that you didn't 13 provide any assistance or input into the drafting of 14 that particular document, I understand that and we can 15 move on. Is that your testimony? 16 MR. SWEETEN: No. What I said earlier is I 17 think it would be fair if you're going to ask him about 18 the categories of documents that you show him the 19 official responses that we submitted to you a week ago. 20 And so he's -- now that he has that in front of him, I'm 21 going to advise him to review it to the extent he needs 22 to in order to answer your question. 23 A. I apologize, again. Can you restate your 24 question one more time? 25 Q. Well, let me actually ask you a different</p>



<p style="text-align: center;">29</p> <p>1 question. Did you search open files as you've testified 2 to in response to the notice of deposition?</p> <p>3 A. No, I did not.</p> <p>4 Q. So I'm trying to understand where files are 5 maintained in your office. I understand there's an 6 off-site location that contains both open and closed 7 files. In your -- in your physical office where you 8 work on a day-to-day basis, can you describe to me the 9 file system there?</p> <p>10 A. Investigators who work in the special 11 investigations unit will have a case file at their 12 actual desk.</p> <p>13 Q. And is that paper, is that electronic or both?</p> <p>14 A. It would be predominantly a paper file. There 15 will also be an electronic report that is maintained 16 through our report writing system.</p> <p>17 Q. And so in addition to the paper file on your 18 desk, you would have a computer, is my understanding?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Where your electronic files would be 21 maintained?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And when I asked you, did you search the open 24 files, let me include that to the -- the question to ask 25 you, did you search the paper files that you maintain in</p>	<p style="text-align: center;">31</p> <p>1 talking about a criminal investigation?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So in terms of criminal investigations, is there 4 a retention policy in your office?</p> <p>5 A. Yes.</p> <p>6 MR. SWEETEN: Are you asking about SIU or 7 are you asking about the office of the Attorney General?</p> <p>8 MR. GEAR: And that's a good point.</p> <p>9 BY MR. GEAR:</p> <p>10 Q. So let's talk about the SIU first. Is there a 11 specific retention policy for criminal investigations, 12 the files in your office?</p> <p>13 A. Our policy is that once the case is closed and 14 adjudicated or closed unfounded, that the files are 15 given to our records manager.</p> <p>16 Q. And who is your records manager?</p> <p>17 A. For SIU the records manager would be Sherry 18 Patke.</p> <p>19 Q. Can you spell the last name for me?</p> <p>20 A. P-A-T-K-E.</p> <p>21 Q. And once they've reached the final adjudication, 22 I believe that's how you stated it, what would Sherry do 23 with the files?</p> <p>24 A. Sherry would update our mainframe system and then 25 prepare the files for storage.</p>
<p style="text-align: center;">30</p> <p>1 your office?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And those would be open files, closed files or 4 both?</p> <p>5 A. Both.</p> <p>6 Q. And I believe you also testified that you 7 searched your electronic files?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And would those contain the open files?</p> <p>10 A. And when I say "open," it could be a case that 11 has not been finally adjudicated so it could include 12 that, yes.</p> <p>13 Q. Could "open" mean anything else because I would 14 like to understand what you mean by open?</p> <p>15 A. We consider a case still open if it's still 16 pending trial and there's not been a final disposition 17 in the case. And so electronically I would look for 18 indictments, for instance.</p> <p>19 Q. Is there a record retention policy in your 20 office?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. Do you know what that is?</p> <p>23 A. Well, it depends on the category of file.</p> <p>24 Q. Well, when we're talking about election code 25 violations, are we talking about -- are we always</p>	<p style="text-align: center;">32</p> <p>1 Q. And when you talk about updating the mainframe 2 system, what do you mean by that?</p> <p>3 A. Each of our cases is -- each case is assigned a 4 case number through our OAG mainframe. And each case 5 has a status, open/closed. And so upon receiving the 6 file, she will update the mainframe to indicate the case 7 is closed.</p> <p>8 Q. Okay. And so when we're talking about a file, do 9 those files include e-mail communications?</p> <p>10 A. Only if that e-mail was printed by the 11 investigator.</p> <p>12 Q. Do they include correspondence?</p> <p>13 A. Yes.</p> <p>14 Q. I believe you testified that they would include 15 the investigator's notes?</p> <p>16 A. Yes.</p> <p>17 Q. Would they include any other type of analysis or 18 report?</p> <p>19 A. They would include a narrative report of the 20 investigation.</p> <p>21 Q. Generally, any other documents that you would 22 find in one of these files?</p> <p>23 A. These files contain lots of documentary items.</p> <p>24 Q. Okay. So once there's a final adjudication, you 25 indicated Sherry would upload it to the mainframe --</p>



<p style="text-align: center;">33</p> <p>1 update it to the mainframe. And then would they be sent 2 to the off-site location?</p> <p>3 A. Just the status is updated in mainframe.</p> <p>4 Q. Okay.</p> <p>5 A. All the documentary files are placed in a box or 6 boxes. And prepared for long-term storage.</p> <p>7 Q. And long-term storage is as we talked about at 8 off-site locations?</p> <p>9 A. We keep them in our division for a short period 10 of time.</p> <p>11 Q. Is there a determination that certain time period 12 that you keep them there?</p> <p>13 A. I don't really know what that is.</p> <p>14 Q. And after that short period of time what happens?</p> <p>15 A. They're sent to, I believe a warehouse.</p> <p>16 Q. And so you indicated there were multiple 17 locations. Can you tell me how many different locations 18 there are off-site?</p> <p>19 A. I do not know how many warehouses we have for the 20 State records system.</p> <p>21 Q. Okay.</p> <p>22 A. We do have a couple of cases that have large 23 volumes of documentary evidence or records. And we have 24 those stored in off-site location. That would be just 25 one location.</p>	<p style="text-align: center;">35</p> <p>1 Q. Okay. So as I understand your testimony, you 2 have an undergraduate degree in criminal justice?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And do you currently hold a master's in any 5 field?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. Any other education generally?</p> <p>8 A. Well, yes, sir. I attended basic peace officer 9 academy in 1993 through the San Antonio College in 10 San Antonio, Texas. And then over the course of my 11 20 years of public service, I have taken many 12 investigative courses.</p> <p>13 Q. Continuing education?</p> <p>14 A. Yes, sir.</p> <p>15 Q. I understand that. So you do not hold a law 16 license, correct?</p> <p>17 A. No, sir, I do not.</p> <p>18 Q. Are there any privileges that you're asserting 19 today?</p> <p>20 MR. SWEETEN: I'll assert the privileges as 21 they may come up. It depends on what you ask him. If 22 you ask him about his doctor/patient relationship, we'll 23 assert the privilege there. With respect to -- he's 24 going to assert as to any attorney/client privilege. 25 There also may be occasion wherein the event it comes</p>
<p style="text-align: center;">34</p> <p>1 Q. And what's the name of that location, if you 2 know?</p> <p>3 A. I don't really know the name of it.</p> <p>4 Q. Is it here in Austin?</p> <p>5 A. Yes, sir, it is.</p> <p>6 Q. Okay. Let me change the subject for a minute and 7 talk about your background. Could you tell me what your 8 educational background is?</p> <p>9 A. I graduated from Southwest Texas State University 10 in 1997 with a bachelor's degree in criminal justice and 11 a minor in sociology. And then I have attended graduate 12 level courses at the University of Virginia at the FBI 13 academy and then also through Sam Houston State 14 University in Huntsville Texas for the leadership 15 command college.</p> <p>16 Q. So the graduate level courses, what was the 17 subject matter of the study?</p> <p>18 A. I attended the 233rd FBI national academy in 19 Quantico, VA in 2008. And while you're attending the 20 academy, you can take graduate level classes through 21 University of Virginia. I took courses in 22 organizational communication. I took courses in 23 intelligence, in law enforcement, organizational change, 24 ethics and integrity in law enforcement and forensics 25 for supervisor?</p>	<p style="text-align: center;">36</p> <p>1 up, the law investigatory privilege. And that's a 2 privilege that would -- if in the event he were asked to 3 reveal a law enforcement investigatory technique, that 4 we would assert as to that. Otherwise, it will depend 5 on the questions that are asked. Thus far, he hasn't 6 asserted any privilege other than the discussions he's 7 had with us.</p> <p>8 BY MR. GEAR:</p> <p>9 Q. I promise you I won't ask you about your 10 doctor/client privilege?</p> <p>11 MR. SWEETEN: That was sort of in gest.</p> <p>12 MR. GEAR: I know.</p> <p>13 BY MR. GEAR:</p> <p>14 Q. Are you a member of any organizations?</p> <p>15 A. Currently I'm a member of the FBI national 16 academy graduate.</p> <p>17 Q. Anything else?</p> <p>18 A. No, sir.</p> <p>19 Q. Have you ever heard of the Austin Area Chapter 20 Association of Certified Fraud Examiners?</p> <p>21 A. Yes, sir, I have.</p> <p>22 Q. Is that an organization with a membership?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Are you a member of that organization?</p> <p>25 A. No, sir.</p>



<p style="text-align: center;">37</p> <p>1 Q. Have you ever presented for that organization, 2 provided any speeches, information related to what you 3 do in the office of the Attorney General?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. Do you know how often you do presentations 6 in front of this organization?</p> <p>7 A. I believe I've done two presentations for the 8 Austin chapter.</p> <p>9 Q. And do you recall when those presentations were?</p> <p>10 A. They were a few years ago.</p> <p>11 Q. General time period?</p> <p>12 A. I would say between 2006 and maybe 2010.</p> <p>13 Q. And you indicated that that particular 14 organization, The Association of Certified Fraud 15 Examiners, has a membership?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And have you ever been a member?</p> <p>18 A. I don't believe -- no, I have not.</p> <p>19 Q. All right. Any other -- let's talk a little bit 20 about your work experience. So you indicated that 21 you're currently with the SIU division. Can we walk 22 that back a little bit and tell me about your work 23 experience?</p> <p>24 A. Well, if I could clarify, I now also supervise 25 the fugitive apprehension unit or the sex apprehension</p>	<p style="text-align: center;">39</p> <p>1 county attorneys. These could be any kind of case from 2 an aggravated robbery to a public integrity 3 investigation.</p> <p>4 Q. When you say, "public integrity," what are you 5 referring to?</p> <p>6 A. This -- a typical case would involve a local 7 official who could be in law enforcement or an elected 8 official or an appointed official who engages in any 9 kind of criminal misconduct associated with their office 10 or while in office.</p> <p>11 Q. So you were with -- you were with this particular 12 division from 1997 to 2003, correct?</p> <p>13 A. With an exception of about two and a half weeks. 14 I left the office of the Attorney General and went to 15 the Texas Department of Insurance for about two and a 16 half weeks.</p> <p>17 Q. And the Texas Department of Insurance has nothing 18 to do with election code violations?</p> <p>19 A. That's correct.</p> <p>20 Q. All right. And so let's just focus on the 1997 21 to 2003.</p> <p>22 A. Okay.</p> <p>23 Q. Did you -- did you ever have an occasion during 24 that time period to work on election code violation 25 referrals, allegations?</p>
<p style="text-align: center;">38</p> <p>1 unit as well. Those are the two units that I'm 2 responsible for supervising, SIU and the fugitive 3 apprehension unit.</p> <p>4 Q. And just briefly, for the fugitive apprehension 5 unit, when did you become a supervisor?</p> <p>6 A. May 1st.</p> <p>7 Q. Does that have anything to do with election code 8 violations?</p> <p>9 A. No, sir.</p> <p>10 Q. Okay. So turning your attention back to the SIU, 11 when did you become a supervisor there?</p> <p>12 A. In 2005.</p> <p>13 Q. And prior to 2005, were you in the office of the 14 Attorney General?</p> <p>15 A. Yes, I was.</p> <p>16 Q. And can you tell me a little bit about what you 17 did prior to 2005?</p> <p>18 A. I was hired with the Texas Attorney General's 19 office the Fall of 1997. I was an investigator assigned 20 to the prosecutor assistance division in special 21 investigations for -- I'm sorry. From 1997 to 2003, I 22 worked in that division. As I stated previously, a good 23 portion of that was working on capital murder 24 investigations throughout the state. We also did other 25 types of investigations at the request of local district</p>	<p style="text-align: center;">40</p> <p>1 A. One.</p> <p>2 Q. One. Can you tell me about that?</p> <p>3 A. There was -- and I can't give you the date. But 4 it was when I came on as a new investigator, there was 5 an allegation of election misconduct in the handling of 6 ballot boxes in Liberty County.</p> <p>7 Q. Do you recall who was the alleged wrong doer in 8 that case?</p> <p>9 A. No, sir, I don't.</p> <p>10 Q. Do you recall any specifics about the 11 investigation?</p> <p>12 A. No, sir. By the time I got the case the statute 13 of limitations expired.</p> <p>14 Q. And the overall allegation was, could you say 15 that again?</p> <p>16 A. I believe the handling of the ballot boxes.</p> <p>17 Q. Was that misconduct by an official?</p> <p>18 A. I don't remember.</p> <p>19 Q. Is it fair to say that -- that the one case that 20 you dealt with between 1997 and 2003 did not deal with 21 voter impersonation?</p> <p>22 A. Yes, sir, that's fair.</p> <p>23 Q. So between 2003 to 2005, what responsibilities 24 did you have within the attorney general's office?</p> <p>25 A. I was assigned as a long-term case investigator.</p>



<p style="text-align: center;">41</p> <p>1 Q. And tell me what the responsibilities are and 2 what division you were in?</p> <p>3 A. In 2003, all of the investigators with the office 4 of the Attorney General merged into the criminal 5 investigations division. Previously we had been 6 assigned to specific divisions that handled specific 7 types of cases. The prosecutor assistance division did 8 any type of case that a local district or county 9 attorney needed assistance on or had been recused in. 10 And so again, I could work any type of case. And there 11 were other divisions that had like financial crimes, 12 they had investigators as well. And the cyber crimes 13 was another particular unit. In 2003 all of the 14 investigators were merged into one division focusing the 15 same in units of specialization.</p> <p>16 Q. Okay. So I think I understand that. So between 17 2003 and 2005, did you ever have an occasion to work on 18 an election code violation case?</p> <p>19 A. In mid-2005 I did when I became the lieutenant.</p> <p>20 Q. And when you say, "when you became the 21 lieutenant," were you part of the SIU at this time?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So between 2003, 2005 until you became the 24 lieutenant in the SIU, you did not work on any election 25 code violation cases?</p>	<p style="text-align: center;">43</p> <p>1 Q. So when you were selected, was that automatically 2 a supervisory position?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And I believe you said you held the rank of 5 lieutenant?</p> <p>6 A. Yes, sir. If I could clarify?</p> <p>7 Q. Please.</p> <p>8 A. It was an investigator supervisor. Because we're 9 so small, I still had to work some cases.</p> <p>10 Q. So in 2005 you became the investigative 11 supervisor. Can you tell me how many people you 12 supervised, if any?</p> <p>13 A. I think it was a small group of maybe -- it 14 varied over the years. But anywhere between 8 and 12.</p> <p>15 Q. And we're talking about 2005 at this point?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Between 8 and 12. Can you tell me generally what 18 the responsibility of the -- were they all 19 investigators?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Of the investigators you supervised, what was 22 their responsibility?</p> <p>23 A. What was their responsibility or mine?</p> <p>24 Q. What was their responsibility?</p> <p>25 A. To conduct investigations that were referred to</p>
<p style="text-align: center;">42</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. So let's move forward then, regarding -- 3 actually, I would like to back up. I'm sorry. You were 4 talking about the records that are maintained in your 5 office. Do the electronic records contain scans of 6 every hard copy document in storage?</p> <p>7 A. No, sir.</p> <p>8 Q. They do not. Moving forward to 2005 when you 9 became the lieutenant in the SIU, how did you become the 10 lieutenant for that particular position?</p> <p>11 A. I believe we submitted our names for 12 consideration and the supervisor of the division 13 reviewed memos and our personnel files and then made a 14 selection.</p> <p>15 Q. And who did you submit your -- did you say letter 16 of recommendation? I'm sorry.</p> <p>17 A. I'm sorry. We submitted our names for 18 consideration and we submitted those to David Boatright.</p> <p>19 Q. David Boatright. And who is David Boatright?</p> <p>20 A. He was the division chief at the time and was 21 later my Major.</p> <p>22 Q. And he was the division chief for the SIU?</p> <p>23 A. For the entire criminal investigations division.</p> <p>24 Q. And obviously you were selected?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: center;">44</p> <p>1 our office.</p> <p>2 Q. And am I accurate to say that the SIU does not 3 only deal with election code violations, it deals with a 4 broad variety of different violations?</p> <p>5 A. That would be accurate. We deal with a wide 6 variety of criminal investigations.</p> <p>7 Q. And generally, can you tell me the types of 8 investigations that the SIU deals with?</p> <p>9 A. Public integrity, election violations, white 10 color crimes such as fraud. And are you talking 2005 or 11 all the way to present, now?</p> <p>12 Q. Let's start off in 2005, just so we're clear. 13 When you started off in 2005, what was the 14 responsibility of the SIU?</p> <p>15 A. I would say fraud, election fraud, public 16 integrity and whatever type of case needed additional 17 investigative assistance. An example, around that time 18 there were many death penalty cases that were under 19 review for consideration of mental retardation. So some 20 of our investigators had to go back and examine those 21 cases to determine whether or not there was evidence of 22 mental retardation.</p> <p>23 Q. Okay. So you started off as a lieutenant. Can 24 you tell me how -- the time periods of which you gained 25 your promotion to a different rank?</p>



<p>45</p> <p>1 A. I was promoted to captain of the special 2 investigations unit in, I believe the Fall of 2007. 3 Q. And you just recently became a major? 4 A. Yes, sir. 5 Q. In 2012? 6 A. Yes, sir. 7 Q. And I believe, off the record you said May of 8 2012? 9 A. Yes, sir, May of 2012. 10 Q. Now, does the increase in rank does that give you 11 any additional responsibility? 12 A. Yes, sir. 13 Q. It does. Okay. So as a lieutenant in the SIU, 14 can you tell me what your identified responsibilities 15 were? 16 A. Was to supervise the daily and weekly 17 investigative activity of the investigators in my unit. 18 That would include reviewing case reports, and providing 19 them assistance or guidance as needed. In many cases, I 20 would also actually accompany the investigators out into 21 the field if they needed additional manpower. 22 Q. Would you sign off on the case reports? Was that 23 part of your responsibility? 24 A. Either I would or my captain at the time. 25 Q. Who was your captain at the time?</p>	<p>47</p> <p>1 A. I have a group that is assigned to the joint 2 terrorism task force. And that has a ranged between two 3 and three employees. 4 Q. So is that it? Are there any other units? 5 A. Well, in May of 2012, I also was added to the -- 6 the fugitive apprehension was added to my 7 responsibility. 8 Q. And they were absorbed into the SIU? 9 A. No, sir, it's a separate group, but it's about 24 10 or 25 employees. 11 Q. Okay. Do their responsibilities cross over? 12 A. No, sir, they do not. 13 Q. Okay. So if my calculations are correct, there 14 are approximately 30 investigators underneath you from 15 the various units that have been absorbed? 16 A. I think it would be a more accurate statement to 17 say between -- I think there's 40 commissioned state 18 police officers in special investigations unit and about 19 24 in the fugitive apprehension unit. 20 Q. So 40 in SIU? 21 A. Correct. 22 Q. And you said "commissioned police officers," what 23 does that mean? 24 A. Investigators who are commissioned through the 25 State law enforcement.</p>
<p>46</p> <p>1 A. In 2005 it would be Greg Lucus. 2 Q. Is he still there with you now? 3 A. Yes. 4 Q. Still a captain? 5 A. Yes. He is not a part of the special 6 investigations unit, however. 7 Q. From 2005 to the present, has the size of the 8 investigators underneath you changed? 9 A. Substantially. 10 Q. Okay. And so I understand in 2005 there were 11 between 10 to 12. Can you tell me how the growth has 12 occurred within your office? 13 A. Well, I believe it was in 2008, the money 14 laundering unit was absorbed into the special 15 investigations unit. And that area of responsibility 16 was added. 17 Q. How many investigators came along with that? 18 A. I would say about eight or nine. 19 Q. Any other units that have been absorbed into the 20 SIU? 21 A. Also the -- what we call the criminal litigation 22 unit, which would be the group of investigators who 23 assist prosecutors in the prosecution of cases. That's 24 about six. 25 Q. About six. Any other units?</p>	<p>48</p> <p>1 Q. And they all carry badges? 2 A. Yes, sir. 3 Q. They are police officers? 4 A. Yes, sir. 5 Q. Okay. And you indicated that there was a captain 6 underneath you. Did you say Greg Russ? 7 A. I'm sorry. His name -- he is not part of my 8 unit. But he was my captain back in 2005. 9 Q. Okay. Do you have -- I'm trying to understand 10 the structure. I know you've got 40 commissioned police 11 officers, investigators that work underneath you and 12 that you supervise. Is there another structure? Are 13 there other managers within your unit? 14 A. Yes, sir there are. 15 Q. Okay. 16 A. There are two captains. 17 Q. Two captains. 18 A. One for the special investigations unit and one 19 for the sex offender apprehension unit, fugitive unit. 20 Q. And the name of the captain that's in the SIU 21 unit? 22 A. Would be Daniel Guajardo. 23 Q. And Daniel reports directly to you? 24 A. That is correct, sir. 25 Q. What about the other captain?</p>



<p>49</p> <p>1 A. He reports to me as well. And his name is Bruce 2 Cook. 3 Q. Does Bruce Cook's responsibilities cross over 4 into the SIU unit? 5 A. No, sir. 6 Q. Okay. So as I understand the structure of the 7 SIU, you are the lead investigator, the supervisor. 8 There's one captain, Daniel? 9 A. Guajardo. 10 Q. Guajardo. And then there are 40 police officers, 11 investigators that are underneath you, correct? 12 A. Yes, sir. 13 Q. Okay. And do you have general staff that 14 assists, supports -- support staff? 15 A. Yes, we do. 16 Q. And generally how large is your support staff? 17 A. I believe we have four auditors. 18 Q. What does that mean, "auditors"?</p> <p>19 A. These are, in some cases they're CFEs or CPAs who 20 assist in the investigation that we conduct. They're 21 noncommissioned personnel. 22 Q. CPA's? 23 A. Certified public accountants. 24 Q. Accountants. They would be assisting with 25 white-collar crimes?</p>	<p>51</p> <p>1 guess it would be half a dozen or so. 2 Q. One more time focusing on your promotion, what is 3 the process of moving from lieutenant to major? What is 4 the process that you had to go through for your 5 promotions? 6 A. We generally prepare a memo involving our core 7 competencies in the identified areas for the position. 8 And this could be a two to three page memorandum, along 9 with a resume. And then there is a board review. 10 Q. Okay. And after each board review, you're told 11 of the determination, if you've been promoted. Would 12 that be fair to say? 13 A. Yes, sir. You are scored by the board and then 14 you're advised of the promotion. 15 Q. Okay. And so you indicated previously that there 16 are additional responsibilities that are added with each 17 promotion. So as a major, is there any other 18 responsibilities that we haven't discussed here? I 19 mean, I understand the structure of your office. I 20 understand that there have been units that have been 21 added to your office. Is there anything else that is 22 of -- that I should know about the structure or your 23 responsibilities? 24 A. Since I've been promoted to major, I think one of 25 the more substantial responsibilities is now budget, is</p>
<p>50</p> <p>1 A. Correct. 2 Q. Okay. Do you have any other support staff that 3 would actually go out into the field? And I'm just 4 speaking specifically about the election code violations 5 to assist with investigations? 6 A. No. Civilians wouldn't go in the field. 7 Q. Okay. What are the names of the auditors? 8 A. Kyle Swihart, Roxanne Mendoza, Rebeka Rutland, 9 Kim Holderread. 10 Q. And would any of the individuals that you just 11 mentioned, would they be involved in election code 12 violations? 13 A. The only way they would be involved in election 14 code violations is if we were conducting an 15 investigation of campaign finance violations or the 16 improper use of government monies for political 17 purposes. 18 Q. Have you had those types of investigations within 19 your office? 20 A. Yes, sir. 21 Q. All right. And can you tell me how many of those 22 types of investigations you've conducted within your 23 office? 24 A. I would -- to give you a firm number I would have 25 the review my spread sheet. But if I were to hazard a</p>	<p>52</p> <p>1 dealing with budgets and hiring. 2 Q. And when you say budgets, generally what do you 3 mean by that? 4 A. Both general revenue funding and then grants that 5 we may have through the attorney general's office. 6 Q. Okay. So again, I understand the structure of 7 your office now, but what is the special investigations 8 unit? What are the specific responsibilities of that 9 unit? 10 A. Currently there is an election team, a fraud 11 team, a public integrity team, a human trafficking team, 12 a financial investigations team, a money laundering team, 13 and a prosecution assistance team. There is also a 14 group of auditors who assist those different teams and a 15 group of analysts who assist those teams. 16 Q. And what are the responsibilities of the 17 analysts? 18 A. The analysts would assist investigators in 19 obtaining contact information regarding witnesses. 20 Q. Do they help maintain the files? 21 A. No. 22 Q. Is it the investigator's responsibility to 23 maintain the individual file? 24 A. Yes, until it's finally done. 25 Q. Okay. And then at that point it would go to</p>



<p style="text-align: center;">53</p> <p>1 Sherry, if I understand correctly?</p> <p>2 A. Yes, sir it would.</p> <p>3 Q. Okay. What else do the analysts do? You said</p> <p>4 they assist with contact information?</p> <p>5 A. They would help prepare any kind of charts, if</p> <p>6 there were any kind of charts developed. They would</p> <p>7 search criminal history information.</p> <p>8 Q. And they're civilians, correct?</p> <p>9 A. Yes, sir, that's correct.</p> <p>10 Q. All right. And so out of all these teams that</p> <p>11 you have described, which ones would deal with election</p> <p>12 code violations?</p> <p>13 A. Just the elections team.</p> <p>14 Q. So you have an elections team and a fraud team.</p> <p>15 Does the fraud team deal with election code violations?</p> <p>16 A. If I could clarify?</p> <p>17 Q. Sure.</p> <p>18 A. It depends on the volume of cases that we have or</p> <p>19 the volume of work required for any of the</p> <p>20 investigations.</p> <p>21 Q. Okay.</p> <p>22 A. I would have a public integrity investigator</p> <p>23 assist the elections team or I could have a human</p> <p>24 trafficker investigator assist so long as it's not</p> <p>25 prohibited by their grants or anything like that.</p>	<p style="text-align: center;">55</p> <p>1 Q. And that's both paper and electronic?</p> <p>2 A. I just said investigative case files.</p> <p>3 Q. Okay. And what does that mean?</p> <p>4 A. It would mean their actual paper files.</p> <p>5 Q. Okay. That would not include the electronic</p> <p>6 files -- strike that. Do they maintain electronic</p> <p>7 files?</p> <p>8 A. Through our case reporting system.</p> <p>9 Q. When was the special investigations unit formed?</p> <p>10 A. I believe in June of 2005.</p> <p>11 Q. And how was it formed?</p> <p>12 A. I don't know.</p> <p>13 Q. Why was it formed?</p> <p>14 A. I don't really know.</p> <p>15 Q. Was it in response to any particular concerns</p> <p>16 that you're aware of?</p> <p>17 A. I don't know.</p> <p>18 Q. Was it the subject of a grant?</p> <p>19 A. At some point in time, SIU has had, and still</p> <p>20 does today, have investigators who are grant funded</p> <p>21 positions.</p> <p>22 Q. Where would those grants come from?</p> <p>23 A. I don't know much about the grants reporting back</p> <p>24 in 2005, but I do know that the grants that we currently</p> <p>25 have are typically through the governor's office.</p>
<p style="text-align: center;">54</p> <p>1 Q. Okay.</p> <p>2 A. So there have been some investigations which have</p> <p>3 required more investigators than what are currently</p> <p>4 assigned to the elections team.</p> <p>5 Q. So as I understand it, the area of concentration</p> <p>6 for the elections team is election code violations?</p> <p>7 A. Correct.</p> <p>8 Q. But other teams can assist when necessary or</p> <p>9 individuals from those teams?</p> <p>10 A. Yes, sir.</p> <p>11 Q. How many individuals do you have working on the</p> <p>12 elections team?</p> <p>13 A. I think there are three right now.</p> <p>14 Q. Three. And who are those individuals?</p> <p>15 A. It would be Stormy Jackson, Wayne Rubio and</p> <p>16 Jeanette. I'm sorry. Oh, gosh.</p> <p>17 Q. Take your time. That's a lot of people you</p> <p>18 supervise.</p> <p>19 A. It's Jeanette, I can't remember her -- I'm sorry.</p> <p>20 Jeanette -- Josephine Smith.</p> <p>21 Q. And did any of these individuals, Jackson, Rubio</p> <p>22 or Smith, assist you in searching documents for the</p> <p>23 notice of deposition?</p> <p>24 A. No. The only instruction I gave them was to get</p> <p>25 their investigative files in order.</p>	<p style="text-align: center;">56</p> <p>1 Q. Do you know the amount of the grants that have</p> <p>2 come from the governor's office?</p> <p>3 A. In total or the ones we currently -- the ones we</p> <p>4 currently have.</p> <p>5 Q. Are you aware of the grant coming from the</p> <p>6 governor's office in 2005?</p> <p>7 A. Yes, I'm somewhat aware of it.</p> <p>8 Q. What was the amount of that grant?</p> <p>9 A. I would say it's in excess of probably a million</p> <p>10 dollars.</p> <p>11 Q. A million dollars. And when you say "in total,"</p> <p>12 do you mean that there have been a series of grants from</p> <p>13 the governor's office?</p> <p>14 A. Yes. Because we also have grants that are</p> <p>15 through the -- for instance, an example would be the</p> <p>16 HIDTA task forces.</p> <p>17 Q. HIDTA stands for?</p> <p>18 A. High intensity drug trafficking area.</p> <p>19 Q. Okay.</p> <p>20 A. So we have grants through there.</p> <p>21 Q. Okay. So let me see if I can ask this in a way</p> <p>22 that it makes sense. In total, how much in the form of</p> <p>23 grants from the governor have been dedicated to the SIU</p> <p>24 division?</p> <p>25 A. I don't think I have that answer.</p>



<p style="text-align: center;">57</p> <p>1 Q. In total, how much in grants from the governor's 2 office have been dedicated to dealing with the issue of 3 election code violation?</p> <p>4 A. It would only be a portion of the grants that we 5 receive.</p> <p>6 Q. Okay. And can you give me a general total as to 7 what we're talking about?</p> <p>8 A. Well, in -- if I could. In 2005, I think we did 9 get a Burns Grant from the governor's office. And 10 that's the grant I think that was in excess of a million 11 dollars.</p> <p>12 Q. Okay.</p> <p>13 A. Out of that grant the OAG hired a number of 14 investigators. A portion of which served in the special 15 investigations unit.</p> <p>16 Q. Now, when these grants are issued, is there an 17 indication of the purpose or the reason for the grants?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And so you talked about the Burns Grant in 20 2005. What was the reason for the Burns Grant?</p> <p>21 A. To conduct criminal investigations. I believe, 22 if my memory is correct, it was for money laundering, 23 sex offender apprehension, cyber crimes, public 24 integrity and election code violations and white-collar 25 crimes.</p>	<p style="text-align: center;">59</p> <p>1 (Exhibit No. 583 was marked.)</p> <p>2 BY MR. GEAR:</p> <p>3 Q. I'm showing you what's been marked as Exhibit 583 4 and I'll give you a chance to take a look at that.</p> <p>5 A. Okay, sir.</p> <p>6 Q. Okay. Have you seen this document before, sir?</p> <p>7 A. No, sir.</p> <p>8 Q. Okay. Can you tell me what it?</p> <p>9 A. It is titled election code -- election code 10 resolve prosecutions by the office of the Attorney 11 General.</p> <p>12 Q. Okay. And can you tell me what this is in 13 reference to?</p> <p>14 A. It indicates the number of cases, criminal 15 investigation division case hours, criminal prosecution 16 division case hours, criminal investigation division 17 cost, criminal prosecutions division cost and then a 18 combined cost.</p> <p>19 Q. And have you prepared a similar form in 20 functions of your duties?</p> <p>21 A. No, sir.</p> <p>22 Q. This indicates -- and if you look at the bottom 23 right-hand corner, it indicates January 25, 2011. Do 24 you see that?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: center;">58</p> <p>1 Q. So it was not just election code. It was a 2 series of different responsibilities that the SIU had at 3 the time.</p> <p>4 A. I'm sorry. Could you restate that one more time?</p> <p>5 Q. Sure. The grant that was in excess of a million 6 dollars was -- was that for the SIU unit or was that for 7 the OAG's office in general, and it was disbursed 8 amongst the various units?</p> <p>9 A. It was a grant for the entire criminal 10 investigations division and it was disbursed between the 11 various units.</p> <p>12 Q. Okay. Can you tell me, either specifically or 13 generally, how much money has been dedicated to election 14 code violations in the State of Texas at this point?</p> <p>15 And I'm talking about the SIU unit.</p> <p>16 A. I really don't have that number.</p> <p>17 Q. You give me a general ball park?</p> <p>18 A. I believe we only had that grant for one or 19 two years.</p> <p>20 Q. Okay.</p> <p>21 A. And I want to say that -- my memory is that about 22 \$90,000 of that grant was used for the investigation and 23 prosecution of election code offenses.</p> <p>24 Q. And you're talking about the 2005 grant?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: center;">60</p> <p>1 Q. And it says, "as of January 25, 2011?"</p> <p>2 A. Yes, sir.</p> <p>3 Q. So as of January 25, 2011 it indicates that -- up 4 at the top, "resolved prosecutions." Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And it says, "number of cases." Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And what's that number of cases?</p> <p>9 A. 62.</p> <p>10 Q. And would that be accurate as of January 25, 11 2011?</p> <p>12 A. I believe that would be representative of that 13 time.</p> <p>14 Q. It says, "criminal investigation division case 15 hours." And do you see the number there?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And how many number -- what is that number?</p> <p>18 A. 10,649.</p> <p>19 Q. Do you believe that that would be accurate 20 representation?</p> <p>21 A. I don't know if that number deals with just those 22 specific prosecutions or if it's actually larger.</p> <p>23 Q. And when you say, "specific prosecutions," you're 24 talking about if it just deals with election code 25 violations?</p>



<p style="text-align: center;">61</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. So it could be more or it could be less,</p> <p>3 if I understand your testimony?</p> <p>4 A. Correct.</p> <p>5 Q. Do you know who prepared -- who prepared this</p> <p>6 form?</p> <p>7 A. I don't know who prepared the form.</p> <p>8 Q. Do you know who would be responsible for</p> <p>9 preparing this form?</p> <p>10 A. I believe it would be our budget or accounting</p> <p>11 division.</p> <p>12 Q. Okay. And if I understood your testimony, you</p> <p>13 are now in charge of budgeting aspects?</p> <p>14 A. No, sir, not completely. We have a budget and</p> <p>15 accounting division and I would work with them on</p> <p>16 various issues.</p> <p>17 Q. Does that have a supervisor?</p> <p>18 A. Budget has a supervisor and I think accounting</p> <p>19 has a supervisor as well.</p> <p>20 Q. And who would that supervisor be for budgeting,</p> <p>21 first?</p> <p>22 A. I've met a lot of new people in the last month</p> <p>23 and a half. I don't know who's in charge of the budget</p> <p>24 right now.</p> <p>25 Q. Okay. And the other division that you --</p>	<p style="text-align: center;">63</p> <p>1 investigation division costs." Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And what is that cost?</p> <p>4 A. \$792,217.</p> <p>5 Q. Okay. And then, the next line is, "criminal</p> <p>6 prosecution division cost." Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. All right. And do you see what the number is?</p> <p>9 A. \$483,258.</p> <p>10 Q. And the combined cost of both?</p> <p>11 A. \$1.275475.</p> <p>12 Q. All right. And then in -- at the bottom of this</p> <p>13 sheet it indicates, "statistics on this sheet relate to</p> <p>14 election code prosecutions during the Abbott</p> <p>15 Administration as of January 21, 2010," correct?</p> <p>16 A. Yes, sir. That's what it says.</p> <p>17 Q. Okay. And so it also includes a total direct</p> <p>18 expense such as travel, court cost and other case fees.</p> <p>19 Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right. Any reason to dispute the numbers</p> <p>22 that are indicated on this exhibit?</p> <p>23 A. No, sir.</p> <p>24 Q. All right. Do you know how much has been</p> <p>25 expended for election code violation prosecutions from</p>
<p style="text-align: center;">62</p> <p>1 A. The other would be accounting division.</p> <p>2 Q. And do you know who the supervisor for accounting</p> <p>3 is?</p> <p>4 A. I believe that's Greg Herbert.</p> <p>5 Q. Greg Herbert. Okay. All right. So essentially</p> <p>6 this goes through -- and again, the title of this</p> <p>7 document is election code resolve prosecutions. And it</p> <p>8 goes through number of cases, the number of hours,</p> <p>9 criminal prosecution division case hours. Why would</p> <p>10 that be distinguished between investigation division</p> <p>11 case hours and prosecution division case hours?</p> <p>12 A. I believe internally within the OAG they have</p> <p>13 divided budgets.</p> <p>14 Q. Okay. And so who would be the supervisor of the</p> <p>15 budget division in 2011, if you know?</p> <p>16 A. I don't know.</p> <p>17 Q. It says, "combined CID, CPD hours." Do you know</p> <p>18 what that stands for?</p> <p>19 A. Combined CID and CPD hours I believe would</p> <p>20 represent a total of the hours worked by the criminal</p> <p>21 investigations division or the criminal prosecutions</p> <p>22 division.</p> <p>23 Q. Okay. And that number is 16,952?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And then its goes on to indicate, "criminal</p>	<p style="text-align: center;">64</p> <p>1 January of 2010 to the present?</p> <p>2 A. No, sir, I do not.</p> <p>3 Q. So what is the purpose of the, I believe you</p> <p>4 said, "election team," what is the purpose of the</p> <p>5 election team?</p> <p>6 A. The elections team responsibility would be to</p> <p>7 conduct criminal allegations of election code offenses.</p> <p>8 These are typically referred by the Secretary of State,</p> <p>9 local, district county attorneys, local elections</p> <p>10 administrators or local law enforcement.</p> <p>11 Q. Okay. And I believe I asked you this before, but</p> <p>12 let me make it more specific to the elections team. Was</p> <p>13 the elections team formed in response to any concerns</p> <p>14 that you're aware of?</p> <p>15 A. It's my understanding that since 1985 the office</p> <p>16 of the Attorney General has had jurisdiction in election</p> <p>17 code offenses or concurrent jurisdiction. So the office</p> <p>18 of the Attorney General conducts those kinds of</p> <p>19 investigations.</p> <p>20 Q. And do you have knowledge of election code</p> <p>21 prosecutions, investigations going back to 1985?</p> <p>22 A. No, sir, I do not.</p> <p>23 Q. Would those records be maintained somewhere?</p> <p>24 A. I don't know what the records retention is for</p> <p>25 those.</p>



<p style="text-align: center;">65</p> <p>1 Q. How far back does your knowledge extend? 2 A. I would say it goes back to, I think, 2002. 3 Q. Are you aware of any voter impersonation 4 investigations, prosecutions, that occurred prior to 5 2002? 6 A. No, sir. 7 Q. You talked a little bit about the jurisdiction of 8 the SIU. What jurisdiction does the special 9 investigations unit have in the State of Texas? 10 A. Do you mean specifically towards elections or in 11 the broader sense? 12 Q. Elections. 13 A. Chapter 273 of the Texas Elections Code discusses 14 the investigations of election code violations. If you 15 have a single jurisdictional election, the jurisdiction 16 may rest with the local district or county attorney. If 17 you have multi-jurisdictional elections, then the 18 jurisdiction may rest with the Texas Attorney General's 19 office. Chapter 273 authorizes the Texas Attorney 20 General's office to conduct investigations and 21 prosecutions of either type, working in conjunction with 22 local DAs or law enforcement. 23 Q. So when you say, "it authorizes them," does that 24 mean they have direct jurisdiction? 25 A. Yes, I believe the statutory language says they</p>	<p style="text-align: center;">67</p> <p>1 bit. The investigations packet would be then, turned 2 over to -- can you go through those again for me? 3 A. It would be either the criminal prosecutions 4 division, or a local district or county attorney. 5 Q. Okay. And so the criminal prosecutions division 6 is within the office of the Attorney General, correct? 7 A. Yes, sir. 8 Q. Okay. And they would be the ones that would be 9 primarily responsible for prosecutions within your 10 office, the OAG's office? 11 A. Unless it was the joint prosecution with the 12 local DA. 13 Q. Okay. And is there a supervisor in the criminal 14 prosecutions division? 15 A. Yes, sir. 16 Q. And do you know who that is? 17 A. Adrian McFarland. 18 Q. And how long -- and is that a he or she? 19 A. It's a she. 20 Q. And do you know how long Ms. McFarland has been 21 the director of that -- of the criminal prosecution 22 division? 23 A. I don't know. 24 Q. So other than providing the investigations 25 packet, are there communications regarding -- that</p>
<p style="text-align: center;">66</p> <p>1 have concurrent jurisdiction. 2 Q. Are they authorized to take the lead on any of 3 these particular investigations, prosecutions? 4 A. I believe that in the case of 5 multi-jurisdictional elections, the answer would be yes. 6 Q. All right. And I believe you've answered this in 7 a general way. Does the SIU prosecute the cases that it 8 investigates? 9 A. Oh, no, sir. 10 Q. So let's talk about that structure a little bit. 11 Your unit, the SIU, conducts the investigations. How 12 does it then, shift to the prosecution stage? 13 A. At the completion of our investigation, we would 14 prepare an investigative packet with statements, 15 reports, supporting documentation, it could be recorded 16 interviews, those kinds of things. And that would be 17 presented to the local district attorney, county 18 attorney or to the criminal prosecutions division. 19 Q. And did you produce these election investigation 20 packets to your attorney, to your attorney in this case? 21 A. In the scope of this? 22 Q. Yes. 23 A. No. 24 Q. All right. And you said something in your 25 answer, and I want to kind of flesh that out a little</p>	<p style="text-align: center;">68</p> <p>1 you're -- the SIU would engage in regarding the contents 2 of the investigations package? I'm talking about with 3 the criminal prosecutions division. How does the 4 package get delivered? I mean, is there -- is it simply 5 the package is prepared and passed off and that's the 6 end of your role? Do you understand what I'm trying to 7 ask you? 8 A. Yes, sir. 9 Q. Okay. 10 A. And I would have to say it depends. Over the 11 years it has changed. And it does not end our role. 12 Frequently, the prosecutors identify additional 13 witnesses they want interviewed or additional documents 14 they want obtained. And so they might ask the 15 investigators to do additional work. 16 Q. So is it fair to say the investigator would stay 17 with the case through the prosecution, the process of 18 prosecution to assist when necessary? 19 A. Ideally, yes. 20 Q. Okay. Are the investigators called to testify at 21 all in these election code violation prosecutions? 22 A. Yes, sir. 23 Q. Have you ever been called to testify during any 24 of the election code prosecutions? 25 A. I have been subpoenaed, however, never had to</p>



<p style="text-align: center;">69</p> <p>1 testify.</p> <p>2 Q. How often has that happened, subpoenaed?</p> <p>3 A. I would say once or twice -- I would say twice.</p> <p>4 Q. Do you recall the specific case?</p> <p>5 A. It would be the State of Texas versus Anita</p> <p>6 Baeza.</p> <p>7 Q. BI?</p> <p>8 A. B-A-E-Z-A.</p> <p>9 Q. Okay.</p> <p>10 A. There was another case that was -- I don't</p> <p>11 remember the defendant's name, but it was out of Hidalgo</p> <p>12 County and was prosecuted in Brooks County?</p> <p>13 Q. Do you remember the time period on that one?</p> <p>14 A. I would say it was probably a case we</p> <p>15 investigated in 2008 or 2009. I was summons down</p> <p>16 probably about 2010.</p> <p>17 MR. GEAR: We've been going for a while. Do</p> <p>18 you guys want to take a break?</p> <p>19 THE WITNESS: Yes, please.</p> <p>20 MR. GEAR: Let's take a little short break.</p> <p>21 Ten minutes.</p> <p>22 MR. SWEETEN: That's fine.</p> <p>23 (Brief recess.)</p> <p>24 BY MR. GEAR:</p> <p>25 Q. Back on the record. We talked a little bit about</p>	<p style="text-align: center;">71</p> <p>1 registration applications. And consequently, when the</p> <p>2 voters went to the polls, they weren't allowed to vote.</p> <p>3 So our office worked on the investigation of the</p> <p>4 potential criminal misconduct for unlawfully rejecting</p> <p>5 voters. But we also assisted the Department of Justice,</p> <p>6 I think it was a civil rights division, in the analysis</p> <p>7 of the data regarding the voter registration and what --</p> <p>8 why voters weren't processed properly and what were the</p> <p>9 reasons. So many were -- because the address wasn't</p> <p>10 complete, so many didn't provide necessary -- so we did</p> <p>11 a statistical analysis during that investigation, which</p> <p>12 was then used, I believe civilly in action by the</p> <p>13 Department of Justice against Waller County.</p> <p>14 Q. So your overall responsibilities in SIU have also</p> <p>15 involved both communications and in conjunction with</p> <p>16 working with the Department of Justice?</p> <p>17 A. Occasionally, yes.</p> <p>18 Q. So for the vast majority of the criminal</p> <p>19 investigations, what is the standard that these cases</p> <p>20 would ultimately have to be prosecuted by? Is it beyond</p> <p>21 a reasonable doubt?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. So it's also fair to say that just because</p> <p>24 you receive a referral does not mean that that person is</p> <p>25 guilty of what the allegation is. There's an</p>
<p style="text-align: center;">70</p> <p>1 what the -- actually we talked a lot about what the SIU</p> <p>2 does, what their responsibilities are. I just wanted to</p> <p>3 circle back to get a clear understanding, the SIU</p> <p>4 conducts criminal investigations?</p> <p>5 A. For the most part, yes.</p> <p>6 Q. And let's narrow that even more and talk about</p> <p>7 election code violations. Are those always criminal</p> <p>8 investigations?</p> <p>9 MR. SWEETEN: That he conducted?</p> <p>10 BY MR. GEAR:</p> <p>11 Q. The SIU that you conduct as a supervisor?</p> <p>12 A. I would say the vast majority are criminal.</p> <p>13 Q. And when you say, "vast majority," the other</p> <p>14 portion of it, when would that cross over, or why would</p> <p>15 that cross over into the civil realm?</p> <p>16 A. Can I give you an example?</p> <p>17 Q. Please.</p> <p>18 A. We were referred a criminal case from the</p> <p>19 Secretary of State's office from Waller County and it</p> <p>20 involved allegations of voters not being allowed to vote</p> <p>21 in an election. I think it was the 2006 general</p> <p>22 election. And there's a particular university there</p> <p>23 named Prairie View University, Prairie View A&M</p> <p>24 University. And there were allegations that the</p> <p>25 elections department did not process their voter</p>	<p style="text-align: center;">72</p> <p>1 investigation and until proven guilty, it's simply a</p> <p>2 referral?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And so we spoke a little bit about fraud</p> <p>5 in the State of Texas. So I would like to define that a</p> <p>6 little bit more. How do you define voter fraud?</p> <p>7 MR. SWEETEN: Do -- let me make sure I'm</p> <p>8 clear. Do you mean how does the SIU? Because that was</p> <p>9 in your definition.</p> <p>10 MR. GEAR: Yes. Yes.</p> <p>11 MR. SWEETEN: Okay.</p> <p>12 A. We would define it as a violation of election</p> <p>13 code offenses or other penal code offenses associated</p> <p>14 with elections.</p> <p>15 Q. (By Mr. Gear) And there are two chapters that</p> <p>16 deal with election code violations, if I'm correct or</p> <p>17 multiple?</p> <p>18 A. Oh, no. Yeah, there's multiple chapters that</p> <p>19 deal with violations.</p> <p>20 Q. Okay. Let me try my hand at this. Chapter 68</p> <p>21 deals with what type of election code violations?</p> <p>22 A. I don't think chapter 68 deals with election code</p> <p>23 violations. 64 deals with some.</p> <p>24 Q. 64?</p> <p>25 A. 63, 84, 86, 253, and I know there are others.</p>



<p>73</p> <p>1 Q. And I'm not going to ask you to identify and 2 define each of these chapters. Which of these chapters 3 deals with voter impersonation?</p> <p>4 A. That would be the -- it could potentially be the 5 voter registration. And that would be in, I believe 6 Chapter 13. And then also, it could also be during the 7 early voting which is covered in 86 or 84. And it also 8 could be during a poll place violation which is, I think 9 in 64.</p> <p>10 Q. You said 86 or 84?</p> <p>11 A. Yes, sir. I'm not sure I know -- I'm not sure I 12 remember perfectly.</p> <p>13 Q. Okay.</p> <p>14 A. If I could just say that we have different 15 categories. We have early voting. We have -- which 16 early voting also includes mail-in ballot. And then, we 17 also have poll place violations.</p> <p>18 Q. And poll place violations would be chapter 64, if 19 I understood you correctly?</p> <p>20 A. Some of the early voting can also involve poll 21 place violations. But I think predominantly 64 is poll 22 place.</p> <p>23 Q. Okay. So early voting involves both by mail and 24 poll place?</p> <p>25 A. Yes, sir.</p>	<p>75</p> <p>1 A. No, sir.</p> <p>2 Q. All right. And again, were you involved in any 3 communication with any of the State agencies regarding 4 SB 14 during the legislative debates?</p> <p>5 A. No, sir.</p> <p>6 Q. And so how did you become familiar with SB 14?</p> <p>7 A. One of our responsibilities at the attorney 8 general's office is to review, you know, statutes.</p> <p>9 Q. Okay.</p> <p>10 A. So obviously, as kind of a criminal investigator 11 with -- that's charged with the responsibility of 12 looking at election laws, I looked at that one.</p> <p>13 Q. And so when you say, "review statutes," can you 14 tell me what you mean. And specifically in terms of 15 voter ID legislation or SB 14, what would -- what would 16 your responsibility be in that respect?</p> <p>17 A. Just reviewing the proposed statutes.</p> <p>18 Q. Do you provide an analysis? Do you provide a 19 summary of the -- of your review of SB 14?</p> <p>20 A. No. I did not.</p> <p>21 Q. So help me understand. Other than it being a 22 provision that deals with election code, what other 23 reasons would you have to look at it?</p> <p>24 A. And this is more broad. In some cases we are 25 asked to do a bill analysis and assess a fiscal impact.</p>
<p>74</p> <p>1 Q. Okay. And I threw out the term "voter 2 impersonation." What is voter impersonation? How do 3 you define that?</p> <p>4 A. Voter impersonation is either someone who is not 5 registered to vote or has -- is registered to vote and 6 has already voted and using somebody else's voters 7 registration certificate to vote again.</p> <p>8 Q. When you say, "not register to vote," what do you 9 mean by that?</p> <p>10 A. This could be a person who has not gone through 11 the process of registering to vote, but is using 12 somebody else's certificate to vote.</p> <p>13 Q. So the underlying premise, for lack of better 14 words, is they are using somebody else's identity to 15 cast a ballot?</p> <p>16 A. Correct.</p> <p>17 Q. Now, are you familiar at all with SB 14?</p> <p>18 A. Some of it.</p> <p>19 Q. Were you involved in any communications during 20 the legislative debates on SB 14?</p> <p>21 A. No, I wasn't involved in the communication.</p> <p>22 Q. Okay. And let me be more specific on that. Were 23 you involved in, for instance, communicating with the 24 governor's office regarding voter ID during the 25 legislative debates on SB 14?</p>	<p>76</p> <p>1 Q. Were you asked to do a bill analysis for SB 14?</p> <p>2 A. No, sir.</p> <p>3 Q. Was anyone within your office asked to do a bill 4 analysis?</p> <p>5 A. I don't know.</p> <p>6 Q. Is that something that you would generally do 7 for -- let me narrow this down so it's easier. Would 8 that be something that your office has done in the past 9 for voter ID legislation?</p> <p>10 A. I don't know if we have been asked to do that.</p> <p>11 Q. Who would be the entity that would make that 12 request?</p> <p>13 A. I believe it would come from our governmental 14 relations division.</p> <p>15 Q. And where is that division located within the 16 structure of the government?</p> <p>17 A. I mean, it would be within the intergovernmental 18 relations division within the office of the attorney 19 general.</p> <p>20 Q. Okay. And so tell me a little bit about that 21 particular division, what do they do?</p> <p>22 A. They deal with other branches of State 23 government.</p> <p>24 Q. Specifically as it relates to voter ID 25 legislation, what would they -- what would their</p>



77 <p>1 responsibilities be?</p> <p>2 A. They would serve as a liaison, I believe, between</p> <p>3 the legislative branch and the office of the attorney</p> <p>4 general. But I don't know their specific -- their</p> <p>5 specific duties.</p> <p>6 Q. So the intergovernmental division?</p> <p>7 A. Intergovernmental relations division.</p> <p>8 Q. Relations division. Did you have any</p> <p>9 communications with that division regarding SB 14?</p> <p>10 A. I don't believe so.</p> <p>11 Q. And when I say, "you," I mean anyone within the</p> <p>12 SIU. Are you aware of anyone who had communications</p> <p>13 with the intergovernmental division?</p> <p>14 A. Like I said, I would like to make a</p> <p>15 clarification.</p> <p>16 Q. Sure.</p> <p>17 A. I think I may have been asked to provide my</p> <p>18 spread sheets, at some point in time.</p> <p>19 Q. And who asked you to provide the spread sheets?</p> <p>20 A. I don't remember if it was my division chief or</p> <p>21 someone within the intergovernmental relations division.</p> <p>22 Q. Did you provide the spread sheets?</p> <p>23 A. Yes, sir.</p> <p>24 Q. When did you provide the spread sheets?</p> <p>25 A. I routinely update those on about a monthly</p>	79 <p>1 Q. Are you aware of any legislators that the spread</p> <p>2 sheet had been provided to?</p> <p>3 A. Yes.</p> <p>4 Q. All right. And who was your spread sheet</p> <p>5 provided to?</p> <p>6 MR. SWEETEN: Okay. Here we're getting into</p> <p>7 a potential area of privilege. I think the court's</p> <p>8 order has said the transmission of information is fine,</p> <p>9 but as to the identity of a legislator it -- he wouldn't</p> <p>10 reveal that. So I think that would be subject to the</p> <p>11 court's order on privilege.</p> <p>12 MR. GEAR: And that's not my understanding</p> <p>13 of the court's order. I think we've been asking,</p> <p>14 generally through all these depositions the who, what,</p> <p>15 when, where. It's the substance of that communication</p> <p>16 that may be privileged.</p> <p>17 MR. SWEETEN: Yeah.</p> <p>18 MR. GEAR: Is my understanding.</p> <p>19 MR. SWEETEN: But I think there's a separate</p> <p>20 issue on -- and Risa and I discussed this yesterday. I</p> <p>21 believe it is on Page 7 of the court's order. That</p> <p>22 would prevent -- let me see if I can find that. Let me</p> <p>23 go off the record.</p> <p>24 MR. GEAR: Go ahead.</p> <p>25 (Discussion off the record.)</p>
78 <p>1 basis. So I just provided them as requested.</p> <p>2 Q. Okay. So help me understand. You said, "you</p> <p>3 provide them as requested." You testified that you</p> <p>4 recall being asked to provide your spread sheets,</p> <p>5 correct?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Were you asked to provide them on a monthly</p> <p>8 basis?</p> <p>9 A. I generally am asked almost on a monthly basis to</p> <p>10 provide these. It could be for a public information</p> <p>11 request. It could be a specific legislative request</p> <p>12 or...</p> <p>13 Q. Do you track who makes a request for your spread</p> <p>14 sheets?</p> <p>15 A. I don't. I -- public information request would</p> <p>16 be tracked through our public information officer.</p> <p>17 Q. What about request from legislatures?</p> <p>18 A. Do I track that?</p> <p>19 Q. Do you track that? "You," being you or your</p> <p>20 office staff in your office?</p> <p>21 A. Well, I would believe that the intergovernmental</p> <p>22 relations division would track it.</p> <p>23 Q. Do you track from your office, SIU, how many</p> <p>24 times you produce the spread sheet?</p> <p>25 A. No.</p>	80 <p>1 BY MR. GEAR:</p> <p>2 Q. So off the record we had a brief discussion of</p> <p>3 privilege. There's been a determination that the</p> <p>4 individual who requested the spread sheet from you has</p> <p>5 waived that privilege. So let me go back to the</p> <p>6 question. What was the name of the legislator that</p> <p>7 requested the spread sheet?</p> <p>8 A. First let me say that I don't communicate</p> <p>9 directly with them at all. They communicate through our</p> <p>10 intergovernmental relations division.</p> <p>11 Q. Okay.</p> <p>12 A. I was advised that Representative, I think his</p> <p>13 name is Raphael Anchia, requested the spread sheet.</p> <p>14 Q. Did you receive that request by e-mail? How does</p> <p>15 that request come to you?</p> <p>16 A. I don't specifically recall exactly how that one</p> <p>17 request came in. It could have been through e-mail. It</p> <p>18 could have been on the phone. I could have been</p> <p>19 directed by my division chief. Most times it's either</p> <p>20 on the phone or by e-mail.</p> <p>21 Q. Do you recall when that request was made?</p> <p>22 A. He's requested my spread sheets multiple times so</p> <p>23 I don't know.</p> <p>24 Q. Well, let's kind of break that down. Can you</p> <p>25 give me a general time period for when he's requested</p>



<p style="text-align: center;">81</p> <p>1 your spread sheets?</p> <p>2 A. He's requested updates on election</p> <p>3 investigations. I think dating back to like 2006 and</p> <p>4 2007, all the way to the present.</p> <p>5 Q. Did you ever have any direct contact or</p> <p>6 communication with Representative Anchia?</p> <p>7 A. No, sir.</p> <p>8 Q. Did anyone within your office have any direct</p> <p>9 contact or communication with Representative Anchia</p> <p>10 regarding the spread sheets?</p> <p>11 A. I don't know.</p> <p>12 Q. How would you produce those spread sheets to</p> <p>13 Representative Anchia?</p> <p>14 A. I would send them electronically, via e-mail. In</p> <p>15 a PDF format.</p> <p>16 Q. Did you search your electronic files for any</p> <p>17 e-mails dealing with your communications or dealing with</p> <p>18 the production of the spread sheets that were given to</p> <p>19 Representative Anchia?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Did you find those?</p> <p>22 A. I found some.</p> <p>23 Q. And did you produce those to your attorney?</p> <p>24 A. Yes.</p> <p>25 Q. And are you aware of whether or not your office,</p>	<p style="text-align: center;">83</p> <p>1 also our public information division.</p> <p>2 Q. Are you aware of any communication with</p> <p>3 Representative Anchia regarding any voter ID</p> <p>4 legislation? And I'm talking about from the SIU</p> <p>5 division.</p> <p>6 A. Can you say that one more time?</p> <p>7 Q. Are you aware of any communication from the SIU</p> <p>8 division, and of the -- from either you or any of your</p> <p>9 staff to Representative Anchia regarding any of the</p> <p>10 voter ID legislation.</p> <p>11 A. We don't communicate with the representatives.</p> <p>12 Q. So the answer to that is no?</p> <p>13 A. No.</p> <p>14 Q. Are you aware of any communications from the</p> <p>15 intergovernmental -- is it special division?</p> <p>16 A. Intergovernmental relations division.</p> <p>17 Q. Relations division with Representative Anchia</p> <p>18 regarding any of the voter ID legislation?</p> <p>19 MR. SWEETEN: Objection; asked and answered.</p> <p>20 Go ahead.</p> <p>21 BY MR. GEAR:</p> <p>22 Q. You can answer.</p> <p>23 A. I don't know.</p> <p>24 Q. Was that it?</p> <p>25 A. Yeah. I don't know.</p>
<p style="text-align: center;">82</p> <p>1 the SIU, or the attorney general's office for that</p> <p>2 matter, had any communications with Representative</p> <p>3 Anchia regarding SB 14?</p> <p>4 A. I did not have any communication with</p> <p>5 Representative Anchia and I do not believe that anybody</p> <p>6 in the special investigations unit had any</p> <p>7 communications with Representative Anchia.</p> <p>8 Q. Are you aware of any communications with the</p> <p>9 OAG's office with Representative Anchia?</p> <p>10 A. Yes, I am aware of communications between the two</p> <p>11 offices.</p> <p>12 Q. Regarding SB 14?</p> <p>13 MR. SWEETEN: Don't speculate. If you don't</p> <p>14 know.</p> <p>15 A. I don't know for sure.</p> <p>16 Q. (By Mr. Gear) Do you know when that communication</p> <p>17 took place? Was it during the legislative session,</p> <p>18 2011?</p> <p>19 A. Yes, sir, I believe so.</p> <p>20 Q. Do you know who initiated that communication?</p> <p>21 A. No, sir.</p> <p>22 Q. Do you know who that communication was with out</p> <p>23 of the OAG's office?</p> <p>24 A. Again, it would be someone in our</p> <p>25 intergovernmental relations division. And potentially</p>	<p style="text-align: center;">84</p> <p>1 Q. Okay. Can you tell me what version of the spread</p> <p>2 sheet was produced to Representative Anchia?</p> <p>3 A. The most current at the time. As I said, I</p> <p>4 update it monthly or as new referrals come in or as we</p> <p>5 obtain new indictments new or judgments and sentences, I</p> <p>6 update them at that time.</p> <p>7 Q. And when you say, "at the time," I'm trying to</p> <p>8 get an idea of the time frame you're talking about here.</p> <p>9 It was during the 2011 legislative session?</p> <p>10 A. I'm sorry. What 2000 what.</p> <p>11 Q. '11 I believe you said?</p> <p>12 A. Yes, sir. 2011.</p> <p>13 Q. Okay. And you said there were also periods prior</p> <p>14 to that. I think you said 2006, 2007, that you provided</p> <p>15 him, "you," being your spread sheet has been provided to</p> <p>16 Representative Anchia?</p> <p>17 A. If I could clarify?</p> <p>18 Q. Please do.</p> <p>19 A. Back in 2006 and 2007 it wasn't -- it wasn't a</p> <p>20 spread sheet. It was just a little summary of where we</p> <p>21 got our referrals from.</p> <p>22 Q. Okay. Did you produce that to your attorneys?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Any other representatives or senators that you're</p> <p>25 aware of that received a copy of the spread sheet?</p>



<p style="text-align: center;">85</p> <p>1 A. Not that I recall. 2 Q. So I was asking you about voter impersonation. 3 And I believe you said that was -- one of which was at 4 the poles. And it was under Chapter 64. Chapter 64, 5 does it cover more than just voter impersonation? 6 A. Yes, sir. 7 Q. Can you give me a general idea of the types of 8 violations covered under chapter 64? 9 A. 64 contains the illegal voting statute, which 10 there are four different types of illegal voting in the 11 State of Texas.</p> <p>12 THE REPORTER: Are you saying legal or 13 illegal? 14 A. Illegal, sorry. Chapter 64 contains the four 15 different types of illegal voting. It also contains 16 other provisions such as unlawful assistance and 17 prohibited conduct in polling places, such as 18 electioneering, lawyering, I believe candidate in a 19 polling place. 20 Q. When you say, "illegal voting," can you identify 21 that a little bit more? 22 A. Yes, sir. There are different elements to 23 illegal voting. 24 Q. Okay. 25 A. One form of illegal voting is voter</p>	<p style="text-align: center;">87</p> <p>1 BY MR. GEAR: 2 Q. Can you tell me how long it's been one of the 3 priorities of the Texas Attorney General? 4 A. That, I don't know. 5 Q. Investigating election code violations, is it one 6 of the primary responsibilities of the special 7 investigation unit? 8 A. It's one of the investigative responsibilities of 9 the special investigations unit. 10 Q. But it would be the primary responsibility of the 11 elections team? 12 A. Correct. 13 Q. I want to change your focus about the referral 14 process and how that actually comes into the attorney 15 general's office. Is there a provision of the Texas 16 election code that allows -- that sets out the process 17 for referrals? 18 A. Yes, sir, there are. 19 Q. And can you tell me generally what those are? 20 A. There's -- it's found in two places in the Texas 21 election code. One indicates a direct referral from the 22 elections administrator themselves. If they have reason 23 to believe that a voter has committed illegal voting. 24 Q. Okay. 25 A. The second is found in chapter 273 of the</p>
<p style="text-align: center;">86</p> <p>1 impersonation. 2 Q. Okay. 3 A. Another form of illegal voting is a person who 4 votes more than once in an election. Another type is a 5 person who is ineligible for election. And the final 6 type is a person who marks a ballot contrary to the 7 instructions of the voter. 8 Q. So based on your familiarity with SB 14, what 9 type of violation would be covered under SB 14, the 10 provisions of SB 14? 11 A. The voter impersonation. 12 Q. Anything else? 13 A. I think that would be it. 14 Q. Has the Texas Attorney General made investigating 15 voter fraud one of his top priorities? 16 A. It is one of the -- on of our investigative 17 functions in our office. 18 Q. And the question was, is it a priority within 19 your office? 20 A. As much as any other priority. And we have 21 multiple priorities. 22 Q. So is your answer, yes, it is one of the AG's 23 priorities? 24 A. I would say yes. 25 MR. SWEETEN: Objection; asked and answered.</p>	<p style="text-align: center;">88</p> <p>1 election code, which talks about the investigations of 2 election code violations. And it indicates that the 3 Secretary of State may refer a case to our office. It 4 indicates that two voters themselves who file an 5 affidavit, sworn affidavit, can refer to our office. 6 And also local district attorneys and county attorneys 7 can file it with our office. 8 Q. So let me just kind of summarize that, if I can. 9 So there are referrals that come from the Secretary of 10 State's office? 11 A. That's correct. 12 Q. There are referrals that come from citizens and 13 local election officials? 14 A. Yes. 15 Q. There are referrals that come from law 16 enforcement agencies? 17 A. Yes. 18 Q. Including local DA's or local prosecutors? 19 A. Yes, sir. 20 Q. Are -- SIU, are they limited to election codes in 21 the State of Texas? Do they investigate outside of the 22 state? 23 A. Oh, no, sir. 24 Q. So other than what we've just summarized about 25 how referrals come in, are there any other ways that</p>



<p style="text-align: center;">89</p> <p>1 referrals could be received by the OAG's office? 2 A. No, sir. 3 Q. And who in the OAG's office is in charge of 4 receiving and maintaining election code violation 5 referrals? 6 A. It depends on the source of the referral. 7 Q. So there are various sources that you've 8 testified to? 9 A. Correct. 10 Q. So is there a different person responsible for 11 each source of referral? 12 A. Yes, sir. If it comes from the Secretary of 13 State's office, it currently goes to the director of law 14 enforcement. If it comes from a local DA or prosecutor, 15 it would generally go to the criminal prosecutions 16 division. If it comes from a direct referral from law 17 enforcement agency, it could come to the director of law 18 enforcement or it could come in to our peace officer 19 liaison. 20 Q. Do you supervise all of these various entities? 21 A. No. 22 Q. Would you know when a referral has come into the 23 OAG's office? Is there a way for you to keep track of 24 the various forms of referrals? 25 A. Yes, sir.</p>	<p style="text-align: center;">91</p> <p>1 A. Yes, sir, W-E-B-P-A-S-S. 2 Q. Is there a specific program that you use to 3 maintain the spread sheet? 4 A. I maintain the spread sheet through Excel. 5 Q. Excel. Does anyone else, or is anyone else 6 responsible within your office that maintains the spread 7 sheet? 8 A. No, I'm the one who maintains the spread sheet. 9 Q. And you've been doing that since 2005? 10 A. No. I want to say 2007, 2008, somewhere around 11 there. 12 Q. So when you talked about Representative Anchia 13 back in 2006, that wouldn't have been the spread sheet 14 in the version that you're currently maintaining? 15 A. That's correct. 16 Q. And I believe you indicated -- I believe you 17 indicated that it was a summary. And can you describe 18 what that summary would have looked like? 19 A. Yes, sir. It was a -- I believe it was a 20 WordPerfect document. And it would identify the county 21 of the offense, the referral source, and then the 22 allegation. 23 Q. At some point, was your spread sheet updated to 24 include violations from 2002? 25 A. Yes.</p>
<p style="text-align: center;">90</p> <p>1 Q. And how do you do that? 2 A. Through the spread sheet. 3 Q. Okay. And so who actually maintains that spread 4 sheet? 5 A. I do. 6 Q. So in order to maintain that spread sheet, if it 7 comes in, for instance through the director of law 8 enforcement, how would you actually know it came into 9 the office? 10 A. He provides it to me. 11 Q. Okay. And so that's what I was trying to get at. 12 So there are various entities or sources that it would 13 come to. They provide you with an electronic version of 14 the referral or do they provide you with paper copy or 15 both? 16 A. I would say sometimes both. They definitely 17 provide me with a written copy. 18 Q. And is there a specific process in your office 19 for making sure you're provided with copies of the 20 referrals that come in? 21 A. Yes, sir. 22 Q. And what is that process? 23 A. We have an internal computer system which is 24 called Webpass, which tracks referrals. 25 Q. Webpass?</p>	<p style="text-align: center;">92</p> <p>1 Q. And when did that happen? 2 A. I would say the spread sheet, the information we 3 obtained on the 2002 cases, was probably around 2005. 4 Q. I'm not sure I understand your testimony now, 5 because you said in 2000 -- 2006 when there was 6 communication with Representative Anchia there was no 7 spread sheet in the current form, correct? 8 A. Correct. 9 Q. And so that would have been in the form of a 10 WordPerfect summary of referrals that have come into the 11 OAG's office. Is that fair to say? 12 A. Yes, sir. 13 Q. Okay. And so you believe that -- now you're 14 saying that in 2005, the spread sheet would have been 15 updated? 16 A. If I could clarify. 17 Q. Please. 18 A. I found -- or obtained the information in 2005 19 about the 2002 cases, but it was for a different 20 purpose. 21 Q. And what was that purpose? 22 A. It was to identify the geographical regions in 23 Texas that had election code violations. 24 Q. And when you say you, "found or obtained the 25 information," what do you mean by that?</p>



<p style="text-align: center;">93</p> <p>1 A. I queried our mainframe system to determine the 2 election cases that we had on file. 3 Q. And why were you trying to determine the 4 geographical area of violations? 5 A. To conduct -- to do a geographic analysis to 6 determine where we would conduct training. 7 Q. Okay. And we'll get into the training a little 8 bit later. 9 A. Yes, sir. 10 Q. So I think I understand the process by which 11 referrals come into your office. They come into 12 different sections depending on the source of the 13 referral, correct? 14 A. Yes, sir. 15 Q. Is there a specific individual that conducts the 16 intake of these referrals? Does that make sense? 17 A. There are different people conducting the intake, 18 depending on where the referral source is. 19 Q. And you've testified to that already, correct? 20 A. When it comes -- when it's identified as an 21 election violation referral, it comes to me and then I 22 conduct an intake. 23 Q. And what is your intake process? 24 A. I obtain and review the referral packet and I 25 identify the county of the offense, the election</p>	<p style="text-align: center;">95</p> <p>1 A. That would be me now. The captain, the 2 lieutenant, and then the director of law enforcement as 3 well. 4 Q. So does that occur during a meeting or is there 5 e-mail communication that's passed between the 6 individuals you just testified about? How is that 7 decision actually made? 8 A. It's generally meetings. 9 Q. Okay. And so is that a weekly meeting, monthly 10 meeting, how do these meetings occur? 11 A. Generally as referrals come in. 12 Q. Okay. Do you wait until you have a certain 13 number of referrals or is it each referral? 14 A. It's generally each referral. 15 Q. All right. And so during this meeting what is 16 actually discussed regarding the referral? 17 A. The first thing that's discussed and evaluated is 18 what -- what kind of offenses are they. We have a 19 practice that some of the referrals that we get are 20 class C misdemeanors. 21 Q. Okay. 22 A. And those are fine-only offenses. And all 23 election cases are labor intensive and so we generally 24 discuss the fact that this is a class C misdemeanor and 25 so we don't investigate those.</p>
<p style="text-align: center;">94</p> <p>1 involved, the referral source and the nature of the 2 allegation. 3 Q. And you also update your spread sheet, as I 4 understand it? 5 A. That's correct. 6 Q. Do referrals -- are they automatically given a 7 complaint number or a tracking number? 8 A. They are given -- yes, they are given what we 9 call a call for service number. 10 Q. And at that point, are they considered an 11 official investigation or is that just simply to track 12 the file as it moves through the system? 13 A. It's to track the file. 14 Q. Are there -- is it -- or has it occurred within 15 your office where a referral has been given a call for 16 service number, but it didn't actually generate into an 17 official investigation? 18 A. Yes, sir. 19 Q. Who makes the actual decision to investigate or 20 not to investigate? 21 A. It's a multi-person decision. 22 Q. Help me understand it. 23 A. Okay. The division chief or the major is 24 required to approve it. 25 Q. Is that you?</p>	<p style="text-align: center;">96</p> <p>1 Q. And who would investigate the class C 2 misdemeanors, if anyone? 3 A. The local jurisdictions like sheriff's 4 departments, police departments, local county attorneys. 5 Q. So is there a determination made at that meeting 6 whether or not to refer it back to the referring source? 7 A. Right. If we determine that it's a class C 8 misdemeanor then we will say we do not have the 9 resources to investigate this. Suggest contacting your 10 county attorney or local law enforcement officials. 11 Q. Does your spread sheet indicate which ones are 12 referred back or whether there was a determination not 13 to investigate? 14 A. No, sir. 15 Q. Do you keep a separate tracking system of what 16 has been closed, essentially in your office and referred 17 back to the referring source? 18 A. Webpass may have that indication in it. 19 Q. Did you produce that information to your 20 attorney? 21 A. No, I did not. 22 Q. So as I understand it, Webpass would indicate the 23 determination on how that case would be handled within 24 the OAG's office or the SIU's office; is that correct? 25 A. If we advised that we were not going to</p>



<p style="text-align: center;">97</p> <p>1 investigate a class C misdemeanor, yes. 2 Q. Okay. Once it's referred back, is there any 3 additional tracking down by your office? 4 A. No, sir. 5 Q. Does the Texas OAG's office ever initiate its own 6 investigations of alleged election code violations? 7 A. No, sir. 8 Q. It's 100 percent referral based? 9 A. It is referral driven. 10 Q. Are the referrals in the Texas OAG's office or 11 the SIU maintained by subject matter or category? 12 A. No, sir. 13 Q. Are they maintained by county or by agency 14 referring agency? 15 A. We generally maintain them by county and whether 16 or not there's SOS referrals or whether or not they're 17 other referrals. 18 Q. Is it possible to search within your mainframe 19 database to determine the exact number of referrals from 20 the SOS, for instance? 21 A. Yes, sir. 22 Q. And then it -- if I understood you correctly, the 23 other search would be for others. And is it possible to 24 determine the other source for referrals? 25 A. Yes, sir.</p>	<p style="text-align: center;">99</p> <p>1 Q. All right. And when I say the attorney general, 2 I mean Greg Abbott in 2005? 3 A. Yes, sir. 4 Q. Okay. And do you see the date on this, Friday 5 June 3, 2005? 6 A. Yes, sir. 7 Q. All right. This indicates -- actually let me do 8 something else just to make this go a little smoother. 9 You've testified routinely about the existence of a 10 spread sheet, correct? 11 A. Yes, sir. 12 Q. All right. Let me mark this, please. 13 (Exhibit No. 585 was marked.) 14 BY MR. GEAR: 15 Q. I'm showing you what's been marked as 16 Exhibit 585. And I just asked you to take a look at 17 that and identify it for the record, please. 18 MR. SWEETEN: Bruce, can I get a copy of 19 that? 20 MR. GEAR: I do not have an extra copy of 21 that. I don't not, sorry. I can make a copy if you 22 want to do that. 23 MR. SWEETEN: Let's just do it at the break. 24 BY MR. GEAR: 25 Q. Is this the spread sheet that you've been</p>
<p style="text-align: center;">98</p> <p>1 Q. Okay. 2 A. If I could clarify? 3 Q. Please. 4 A. The ability to search all of the election 5 violations will require like a -- it will just 6 categorize it as an election violation and I will have 7 to go through manually and determine whether or not it 8 was an SOS or a other referral. 9 Q. So it would require manual search? 10 A. Right. 11 Q. Okay. 12 (Exhibit No. 584 was marked.) 13 BY MR. GEAR: 14 Q. I've shown you what has been marked as 15 Exhibit 584. Take your time and take a look at this. 16 A. Yes, sir. 17 Q. So first of all, I want to see if -- have you 18 reviewed these types of documents before? 19 A. These types of documents, but not specifically 20 this document. 21 Q. Okay. And what is this? 22 A. This is a -- I would call this a press release. 23 Q. And it comes directly out of the attorney 24 general's office? 25 A. That's correct.</p>	<p style="text-align: center;">100</p> <p>1 referring to? And to be fair, this may be a series of 2 spread sheets and I'm just trying to understand what 3 exactly they are. 4 A. If you could just give me a moment. 5 Q. Sure. 6 A. Yes, sir. They appear to be the spread sheet 7 I've been referencing. 8 Q. Okay. Now, are all of these maintained by you, 9 created by you? 10 A. Yes, sir. 11 Q. And this would be a version that was if I'm 12 correct, and correct me if I'm wrong, that was printed 13 in 2012. Do you see the date on the bottom of the 14 spread sheet? 15 A. Yes, sir. 16 Q. And to be accurate, it was March 12th of 2012? 17 A. Yes, sir. 18 Q. And there's also another version here that was 19 printed on March 9th of 2012. And it would be the 20 election code referrals to the office of the attorney 21 general August 2002 to the present. Do you see that 22 particular version they I'm talking about? 23 A. Yes, sir. 24 Q. And would these have been printed by you? 25 A. They would be electronically published by me.</p>



<p style="text-align: center;">101</p> <p>1 Q. Okay. And when you say, "electronically 2 published," do you publish these spread sheets on any 3 particular system? Do you make them publicly available? 4 A. If I could explain? 5 Q. Sure. 6 A. I maintain an Excel spread sheet that has three 7 different books. One book is specifically for 8 referrals. One book is specifically for prosecution 9 resolved. And one book is for charges pending. And 10 then I publish to a PDF any one of those three books or 11 a combination of all three or all three. 12 Q. And when you say, "publish to a PDF," where does 13 that go? 14 A. It could go to somebody in our open records 15 division who has requested a copy. It could go to our 16 intergovernmental relations division. 17 Q. So if a news agency wanted a copy of your spread 18 sheets, then that would be published and released to the 19 news agency? 20 A. Yes, sir. 21 Q. Okay. When news -- have news agencies made 22 request for your spread sheets in the past? 23 A. Yes, sir. 24 Q. And other than the spread sheet, do you provide 25 them with any additional information?</p>	<p style="text-align: center;">103</p> <p>1 within the spread sheet? 2 A. Referral TX 0056816, contains the charges pending 3 resolution. 4 Q. And how far does that -- how many pages is that? 5 A. It's two-pages, sir. 6 Q. Okay. So the next set of spread sheet would be 7 TX 0056818. And that indicates election code referrals 8 to the office of the attorney general, prosecutions 9 resolved. Is that accurate? 10 A. My Bates stamp is cut off on that. But this 11 document contains the prosecutions resolved. 12 Q. And how many pages is that? 13 A. Contains five pages, sir. 14 Q. Okay. And then the -- there's another spread 15 sheet that indicates on -- starts with TX 0056823. It 16 indicates on the top, election code referrals to the 17 office of the attorney general, August 2002 to the 18 present. Do you see that one? 19 A. Yes, sir. 20 Q. And which one would this represent? 21 A. This one represents the referrals. 22 Q. And so I see that this is 2002 to 2012. Is that 23 accurate? 24 A. Yes, sir. 25 Q. So during the 2011 session, this would not have</p>
<p style="text-align: center;">102</p> <p>1 A. No, sir. 2 Q. So it's generally the spread sheet that is 3 publicly released when requested? 4 A. Yeah. If I could clarify. 5 Q. Please. 6 A. Unless they specifically asked for another 7 document, such as a charging instrument or indictment or 8 judgments or sentence. 9 Q. And those -- 10 A. In some cases they do ask for those as well as 11 the spread sheets. 12 Q. Okay. All right. So now you have your spread 13 sheet in front of you that you've identified. And let 14 me actually clarify something. You said there were 15 three different versions of the spread sheet or three 16 different books: The referrals, the prosecutions and 17 pending. Can you identify for me, are there three 18 different versions here or three different books or is 19 this all from one of these versions of the spread sheets 20 that you have testified? 21 A. This is one spread sheet which contains three 22 books. 23 Q. Okay. And so looking at the spread sheet, it 24 starts with TX 000056816. Could you -- I'm trying to 25 get you to identify the books for me that are contained</p>	<p style="text-align: center;">104</p> <p>1 been the spread sheet that was provided to 2 Representative Anchia? 3 A. Yes, that would be incorrect. 4 Q. That would be incorrect? 5 A. I'm sorry. This would not be the spread sheet 6 that was provided to Representative Anchia. 7 Q. It would have only included the 2011 referrals? 8 A. Up to the most current, at the time of the 9 request. 10 Q. And I believe I asked you and I'm sorry if I did, 11 do you recall when you provided him a copy -- there were 12 multiple occasions, but in 2011, do you recall the time 13 period you provided to him these spread sheets? 14 A. It may have preceded the legislative session and 15 it would have -- but we can provide him continuous 16 updates. So he made multiple request. 17 Q. And you said, "it may have preceded the 18 legislative session." Could it have been during the 19 legislative session? 20 A. Yes, sir. 21 Q. Okay. All right. Do you know if he got a copy 22 of the March 12, 2012 version? 23 A. I don't know. 24 Q. You don't know. Okay. So turning your attention 25 back to Exhibit 584, I believe, which is the press</p>



<p style="text-align: center;">105</p> <p>1 release from Attorney General Greg Abbott. It indicates 2 on here that the attorney general's office announced the 3 first indictments for alleged voter fraud in Texas. 4 Would 2005 be the -- be the time period in which the 5 first indictments were issued from regarding voter 6 fraud?</p> <p>7 A. I don't know that.</p> <p>8 Q. Okay. And 2005 would have been when you came on 9 board for the SIU?</p> <p>10 A. That's correct.</p> <p>11 Q. Do you know how these press releases are created, 12 how they're generated?</p> <p>13 MR. SWEETEN: Objection; calls for 14 speculation.</p> <p>15 BY MR. GEAR:</p> <p>16 Q. Go ahead. Do you know how?</p> <p>17 A. No, not really.</p> <p>18 Q. Okay. Are you involved in the information that's 19 contained within this particular press release?</p> <p>20 A. No.</p> <p>21 Q. Would you ever be asked for information prior to 22 the release of these particular press releases?</p> <p>23 A. Occasionally, yes.</p> <p>24 Q. So the information that these -- that at least 25 the 2005 press release is addressing, is election code</p>	<p style="text-align: center;">107</p> <p>1 ballot or carrier envelope of another. 2 Q. And that's indicated in the press release as 3 well, Exhibit 584?</p> <p>4 A. In the press release it does not indicate that he 5 has plead guilty. It only indicates that he has been 6 charged with possession of a mail-in ballot. 7 Q. And just so that we clarify this as we move 8 along, would this have been chapter 64 or would it have 9 been a different chapter?</p> <p>10 A. This would have been chapter 86 or 84. 11 Q. And that would not have involved voter 12 impersonation, correct?</p> <p>13 A. No, it would not have involved voter 14 impersonation.</p> <p>15 Q. There is a second indictment that's discussed 16 here on May 27, Beeville resident, Melva Kay Ponce, do 17 you see that?</p> <p>18 A. Yes, sir, I do.</p> <p>19 Q. And generally, can you tell me, does this 20 allegation involve voter impersonation?</p> <p>21 A. Yes, sir, it does.</p> <p>22 Q. And looking at Exhibit 584, can you explain to me 23 what the facts are?</p> <p>24 A. Melva Kay Ponce utilized her mother's mail-in 25 ballot to cast a vote in the 2004 general election.</p>
<p style="text-align: center;">106</p> <p>1 violations, correct?</p> <p>2 A. Yes, sir, it is.</p> <p>3 Q. And would you have provided information regarding 4 these election code violations?</p> <p>5 A. Not for this press release.</p> <p>6 Q. Okay. So the first violation that's referenced 7 in here is the Hardeman County, Precinct 1, Commissioner 8 Johnny Akers, do you see that?</p> <p>9 A. Yes, sir, I do.</p> <p>10 Q. All right. And looking at Exhibit 585, which is 11 your spread sheet, do you see that referenced in -- 12 within your spread sheet?</p> <p>13 A. Yes, sir, I do.</p> <p>14 Q. And specifically turning your attention to 15 TX 0056818, is that the page that you're looking at?</p> <p>16 A. Again, the Bates stamp is cut off on this one. 17 But it is Page 1 of the prosecutions resolved.</p> <p>18 Q. All right. And can you tell me what happened 19 with the -- what were the facts of the Johnny Akers 20 case?</p> <p>21 A. He was -- the allegation is that he was handling 22 mail-in ballots during the course of the election. And 23 he was charged with six counts of possession of official 24 ballot or carrier envelope of another. And then he 25 plead guilty to one count of possession of an official</p>	<p style="text-align: center;">108</p> <p>1 Q. So that's a by mail violation?</p> <p>2 A. It's a by mail voter impersonation, yes, sir.</p> <p>3 Q. Would that have been covered under the provisions 4 of SB 14? Would it have been prevented if SB 14 was in 5 place?</p> <p>6 A. No, sir. (Exhibit No. 586 was marked.)</p> <p>7 BY MR. GEAR:</p> <p>8 Q. Just so I'm clear, both Akers and Ponce dealt 9 with by mail ballot fraud?</p> <p>10 A. Yes, sir.</p> <p>11 Q. I'm showing you what's been marked as 12 Exhibit 586. And take your time and take a look at 13 that. Generally, just so we can move along, you 14 indicated that Mr. Akers plead to the charge?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you know what he plead to?</p> <p>17 A. Plead guilty to one count of possession of 18 official ballot or carrier envelope of another.</p> <p>19 Q. And the Exhibit I just handed you, the press 20 release from Greg Abbott indicates what he plead to?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. And again, just so I'm clear on the 23 record, this is another press release from the attorney 24 general's office?</p>



<p style="text-align: center;">109</p> <p>1 A. Yes, sir. 2 Q. And the date of the press release is 3 November 7th, 2005? 4 A. Yes, sir. 5 Q. All right. 6 (Exhibit No. 587 was marked.) 7 BY MR. GEAR: 8 Q. All right. So I'm showing you what's been marked 9 as Exhibit 587. Take your time and then identify what 10 it is for me, please. 11 A. Okay, sir. 12 Q. Can you identify that for me, please? 13 A. This appears to be a press release regarding 14 indictments against four Nueces County voters. 15 Q. And the date of the press release? 16 A. Would be December 19, 2005. 17 Q. Okay. And it indicates who was indicted within 18 the press release? 19 A. Yes, sir, it does. 20 Q. And can you tell me who was indicted? 21 A. Elida Garza Flores, Isabel Rios Gonzales, 22 Josefina Marinas Suarez and Virginia Ramos Garza. 23 Q. And so either looking at your spread sheet or at 24 Exhibit 587, can you tell me what the facts of that 25 indictment were?</p>	<p style="text-align: center;">111</p> <p>1 12 months of community supervision. Elida Garza Flores 2 also accepted a one-year pre-trial diversion in which 3 she received 12 months of community supervision. 4 Isabel Lisa Rios Gonzalez pleaded no contest to two 5 counts of possession of an official ballot or carrier 6 envelop of another, and received one-year deferred 7 adjudication. 8 Q. All right. And so I want to ask you, there's a 9 couple of things that you said that I didn't completely 10 understand. A class C or class E misdemeanor, what does 11 that actually mean? 12 A. We have three claims of misdemeanor offenses in 13 the State of Texas. We have a class C misdemeanor, a 14 class B misdemeanor and a class A misdemeanor. A class 15 C is punishable by fine only. And I believe the fine is 16 \$500 or less. A class B is punishable by up to six 17 months in a county correctional facility and a fine, I 18 think \$2,000 or less. And then a class A misdemeanor is 19 punishable by up to one year in a county correctional 20 facility and a fine of \$4,000 or less. 21 Q. So class C and class E, they non-criminal 22 offenses? 23 A. We don't have a class E. Class B, as in Brava. 24 Q. Okay. Class B, is that a non-criminal offense? 25 A. No, sir, that's a criminal offense.</p>
<p style="text-align: center;">110</p> <p>1 A. Okay. This case was a 2005 school district 2 election. And it would have been referred to our office 3 by the Secretary of State's office. And it involved 4 mail-in ballot fraud. And when I mean mail-in ballot 5 fraud, it involves the unlawful handling of the mail-in 6 ballots and also unlawful assistance in assisting the 7 voter in the preparation of those ballots or the 8 application to obtain those ballots. 9 Q. So if I'm correct, this would not have been 10 chapter 64, which deals with voter impersonation, 11 correct? 12 A. It potentially could have been. 13 Q. Turning your attention to Exhibit 587, do you see 14 where it says the indictments apply to violations of 15 chapter 86? 16 A. Yes. 17 Q. Any reason to dispute that? 18 A. No, sir. 19 Q. Okay. And turning to your spread sheet, do you 20 see those individuals indicated on your spread sheet? 21 A. Yes, sir, I do. 22 Q. And can you tell me, ultimately, what the 23 determination was on these cases, were they resolved? 24 A. Yes, they were resolved. Virginia Ramos Garza 25 accepted a one-year pretrial diversion, which involved</p>	<p style="text-align: center;">112</p> <p>1 Q. So focusing on class C then, you previously 2 testified that if there was a determination that it was 3 a class C offense, it would be referred back to the 4 referring agency? 5 A. Yes, sir. 6 Q. So would that then, be a non-criminal offense or 7 is it just -- you tell me. 8 A. It's a criminal offense. However, it's only 9 punishable by fine only. 10 Q. Okay. Would that be considered an ordinance 11 under Texas law? 12 A. Ordinances passed by city councils or county 13 commissioner's courts are also potential class C's only. 14 They don't involve jail time. 15 Q. And those would also be referred back if they 16 came to your office? 17 A. We wouldn't investigate municipal or county 18 ordinances. 19 Q. Okay. But local election officials could refer 20 various allegations to you regarding election code 21 violations; isn't that correct? 22 A. Local officials could refer election cases to us. 23 Q. Okay. Do they ever refer allegations that would 24 fall under the class C or ordinance type violations? 25 A. Yes, they do.</p>



<p style="text-align: center;">113</p> <p>1 Q. Okay. And those would not be investigated by 2 your office?</p> <p>3 A. Not now, no.</p> <p>4 Q. Okay. When you say, "not now," let me understand 5 that. Was there ever a time when you actually 6 investigated class C or ordinance-type violations?</p> <p>7 A. When -- in some of these referrals that come into 8 our office, they include a whole host of allegations.</p> <p>9 Q. Okay. Including class Cs?</p> <p>10 A. Including class Cs. And so if we were already 11 there investigating other offenses, we would address the 12 class C, but we would not initiate a case just off of a 13 class C.</p> <p>14 Q. Okay. That's understandable. All right. And so 15 turning back to, I believe it's Exhibit 587, with the 16 four indictments, that was indictments for chapter 86, 17 and that's by mail ballot or fraud; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And that would not have included voter 20 impersonation?</p> <p>21 A. It potentially could have.</p> <p>22 Q. But again, the press release indicates that the 23 violations apply to chapter 86?</p> <p>24 A. The press release does say that they were 25 indicted for mail-in ballot, yes.</p>	<p style="text-align: center;">115</p> <p>1 on two counts of possession of an official ballot or 2 carrier envelope of another, received one year 3 adjudication, a \$500 fine and 12 months community 4 supervision. Josefina Suarez also pled guilty to one 5 count of illegally possession of an official ballot or 6 carrier envelope of another, received one year 7 adjudication, a \$500 fine and was sentenced to 12 months 8 community supervision.</p> <p>9 Q. What does deferred -- retrial diversion mean?</p> <p>10 A. Pretrial diversion is an agreement between the 11 defense attorney and the prosecuting attorney to some 12 sort of alternative punishment without any finding of 13 guilt.</p> <p>14 Q. So in the case of Ms. Garza, Ms. Flores, 15 Ms. Gonzales, there was no finding of guilt?</p> <p>16 A. With Garza and Flores, they both accepted a 17 pretrial diversion so there was no court finding.</p> <p>18 Q. And then for Ms. Gonzales?</p> <p>19 A. She plead no contest.</p> <p>20 Q. Which is not an admission of guilt, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And for Ms. Suarez, she pled guilty?</p> <p>23 A. That's correct.</p> <p>24 (Exhibit No. 588 was marked.)</p> <p>25 BY MR. GEAR:</p>
<p style="text-align: center;">114</p> <p>1 Q. And so when you keep -- you testified several 2 times that it potentially could have. What do you mean 3 by that?</p> <p>4 A. I mean that one of the schemes of conduct that we 5 have seen in mail-in ballot fraud, and examples by 6 Melva Kay Ponce, is that she impersonated her mother. 7 And some cases, some of the mail-in ballot case that we 8 examined, campaign workers will obtain a blank ballot 9 from the voter and then cast those ballots as if they 10 were the voter.</p> <p>11 Q. And again, that's through the by mail ballot 12 system?</p> <p>13 A. That is correct.</p> <p>14 Q. And that would not have, as I understand your 15 testimony, been covered by -- if SB 14 was implemented?</p> <p>16 MR. SWEETEN: Objection; calls for 17 speculation.</p> <p>18 A. That is also correct.</p> <p>19 Q. (By Mr. Gear) And your answer was?</p> <p>20 A. No, it would not.</p> <p>21 Q. Okay. And I'm sorry if I got off track. Can you 22 tell me, did you testify to what the conviction was, if 23 any?</p> <p>24 A. I got the -- I got the first two down. The final 25 two Isabel Lisa Rice Gonzales pled no contest. And was,</p>	<p style="text-align: center;">116</p> <p>1 Q. Showing you what's been marked as 588. Take your 2 time and then identify that document for me, please.</p> <p>3 A. Okay, sir. This document appears to be a press 4 release that was issued in Friday -- on Friday 5 January 13, 2006 by the office of the attorney general.</p> <p>6 Q. Okay. And do you see the individual who was 7 indicted in this press release?</p> <p>8 A. Yes, sir, I do.</p> <p>9 Q. You say the name for the record?</p> <p>10 A. There were actually two persons indicted in this 11 case. That would be Anita Baeza and Trinidad 12 Villalobos.</p> <p>13 Q. Okay. So starting with Ms. Baeza, indicates that 14 she's a 68-year old mother of the sheriff's officer 15 candidate Jeffery Baeza. Can you tell me what the 16 allegation is for her?</p> <p>17 A. This move involved mail-in ballot fraud.</p> <p>18 Q. And I just say for the record, you refer to your 19 spread sheet?</p> <p>20 A. Correct.</p> <p>21 Q. So again, this is mail-in ballot fraud?</p> <p>22 A. Yes, sir. In the 2006 primary election. No. 23 I'm sorry. Incorrect. The 2004 primary election.</p> <p>24 Q. And there was another individual that you 25 indicated, Villalobos?</p>



<p style="text-align: center;">117</p> <p>1 A. Yes, sir. Trinidad Villalobos. 2 Q. And can you tell me what the allegation for that 3 was? 4 A. Also mail-in ballot fraud. 5 Q. From the same election? 6 A. Referring to my spread sheet, it was the 2004 7 primary election yes, sir. 8 Q. So both were the 2004 primary election. Can you 9 tell me generally what the allegations of this 10 indictment were? 11 A. This again, goes to persons who were assisting in 12 the application for mail-in ballots during the early 13 voting in that election. And then also, once early 14 voting started assisted in either the completion of the 15 ballot or the handling of the ballot. 16 Q. And if I'm correct, these would have been under 17 chapter 86, dealing with mail-in ballot fraud? 18 A. Yes, sir 86006. 19 Q. And do you know what the outcome of these 20 indictments were? 21 A. Trinidad Villalobos was found guilty by a jury on 22 four counts of possession of mail-in ballot or carrier 23 of another. She received ten days in jail. And she was 24 sentenced to six months of probation. And then Anita 25 Baeza accepted six months of pretrial diversion.</p>	<p style="text-align: center;">119</p> <p>1 Q. Okay. So far is, it fair to say that all of 2 these violations dealt with by mail ballot fraud? 3 MR. SWEETEN: Objection; asked and answered. 4 Objection; compound. You can answer. 5 A. These all involved mail-in ballot fraud, which 6 could potentially include voter impersonation. 7 Q. You keep indicating that, but these were charged 8 under chapter 86, correct? 9 MR. SWEETEN: Objection; argumentative. 10 BY MR. GEAR: 11 Q. Well, were they charged under chapter 86? 12 A. They were charged under chapter 86. Yes, sir. 13 Q. Chapter 86 does not include voter impersonation, 14 correct? 15 A. Well Melva Kay Ponce was charged with voter 16 impersonation. 17 Q. But it was through the by mail ballot system? 18 A. That's correct. 19 Q. And again, I believe you testified that that 20 would not have been prevented if SB 14 was in place? 21 MR. SWEETEN: Objection; calls for 22 speculation. 23 BY MR. GEAR: 24 Q. You can answer. 25 A. I don't believe it would have.</p>
<p style="text-align: center;">118</p> <p>1 Q. And again, neither of those dealt with voter 2 impersonation. Or let me put it a different way so it's 3 easier for you to understand, perhaps. Both of those 4 dealt with chapter 86 of the election codes? 5 A. Yes, sir, that's what they were charged with. 6 Q. And neither of them pled to a charge of voter 7 impersonation? 8 A. That's correct, sir. 9 Q. Okay. It also says at the bottom of, I believe 10 Exhibit 588, that in December, four individuals were 11 indicted for illegally possessing and transporting 12 election ballots following the 2005 ISD election in, is 13 it Nueces County? 14 A. Yes, sir, that's correct. 15 Q. And that's what we've previously referred to in 16 your testimony? 17 A. Yes, sir, the 2005 Robstown independent school 18 district election. On the chart, it's listed as the 19 2005 school district election. 20 Q. Okay. And it also says, the paragraph underneath 21 that attorney general obtained a guilty plea from Bee 22 County woman accused of voter fraud. And the Bee County 23 woman this is referring to would be Melva Ponce, is that 24 accurate? 25 A. Yes, sir. Melva Kay Ponce.</p>	<p style="text-align: center;">120</p> <p>1 (Exhibit No. 589 was marked.) 2 BY MR. GEAR: 3 Q. Showing you what's been marked as Exhibit 589. 4 Take a second to look at this, please. 5 A. Okay, sir. 6 Q. Can you tell me what this? 7 A. Sir, appears to be a press release issued by the 8 Texas Attorney General's office regarding a training 9 initiative our office was conducting. 10 Q. And the date of the press release? 11 A. Wednesday January 25, 2006. 12 Q. And before we talk about this, I would like to 13 talk about your spread sheet. From -- the SIU was 14 established in 2005, correct? 15 A. Yes, sir. 16 Q. And what month in 2005? 17 A. I want to say June. 18 Q. June of 2005. So between June 2005 to 19 January 25th of 2006, how many referrals did the OAG's 20 office receive? 21 A. I'm sorry. Could you repeat that one more time? 22 Q. Between June of 2005, the establishment of SIU, 23 to January of 2006, the date of this press release, how 24 many referrals were received by the OAG office? And can 25 you tell that based on your spread sheet?</p>



<p style="text-align: center;">121</p> <p>1 A. Yes, sir I could tell the referral that we 2 received from the SOS. 3 Q. Okay. And how many referrals were those? 4 A. To January 2006? 5 Q. Yes, sir. 6 A. Six, sir, in the Secretary of State's office. 7 Q. And I believe that you said -- do one of these 8 spread sheets show the other referrals? 9 A. Yes, sir, it does. 10 Q. And which portion of the spread sheet or which 11 Bates stamp number would that be? 12 A. My Bates stamp number is partially cut off. 13 Q. And I apologize for that. 14 A. But it would start on Page 6 with a title heading 15 selection code referrals of the office of the 16 attorney general -- August 2, 2002 to present. 17 Q. What's the Bates stamp number on the bottom? 18 A. I have, it starts with TX 0005682. 19 Q. And the top is election code referrals to the 20 office of the attorney general, prosecutions revolved, 21 or am I looking at the wrong one? 22 A. I believe you're looking at the wrong one. It 23 would be election code referrals to the office of the 24 attorney general, August 2, 2002 to the present, Page 6. 25 It was published 3/9/2012.</p>	<p style="text-align: center;">123</p> <p>1 sources. 2 Q. Eight? 3 A. Eight. 4 Q. Okay. Turning your attention back to 589, 5 indicates that, "the Attorney General Greg Abbott 6 launches initiative training -- training initiative to 7 identify, prosecute, prevent voter fraud." Was that 8 initiative launched in 2005 or was it launched in 2006? 9 A. It was initiated in late 2005 and finalized in 10 the first part of 2006. 11 Q. Okay. And so the initiative -- what did the 12 initiative involve? And you can refer to 589 if you 13 would like to. 14 A. It involved developing, first of all, identifying 15 geographical regions in the State of Texas where the 16 office had previously investigated and prosecuted 17 allegations of election misconduct. It involved the 18 development of a law enforcement outreach training 19 program. And then it involved scheduling and conducting 20 training to law enforcement officers in Texas. 21 Q. Before we get into the various categories, were 22 there training materials produced or created as a result 23 of this initiative? 24 A. Yes, sir. 25 Q. And were those training materials specific to the</p>
<p style="text-align: center;">122</p> <p>1 Q. All right. And so I believe your testimony was 2 there were six referrals from the Secretary of State's 3 office. Between that time period, how many from other 4 sources? 5 A. I wouldn't be able to determine this off the 6 spread sheet. 7 Q. How would you make that determination then? 8 A. I would have to go back and look at the call for 9 service. 10 Q. Okay. Does this give you a general ball park of 11 the number of referrals? 12 A. I would say yes, because there were only two 13 elections that occurred in -- based off this document in 14 2005. 15 Q. Okay. And so how many referrals are we talking 16 about then, in a general ball park basically? 17 A. It would be two. 18 Q. Two. So we're talking about a total of seven 19 referrals from the date of the establishment of the SIU 20 to the date of this press release, which is January 25, 21 2006. Is that fair to say? 22 A. I believe I said there were six referrals from 23 the Secretary of State's office. 24 Q. Okay. 25 A. And then there appears to be two from other</p>	<p style="text-align: center;">124</p> <p>1 different agencies that you were focusing on or was 2 there just one general training -- source of training 3 material? 4 A. Just one source of training. 5 Q. Okay. And were these training materials turned 6 over or provided to the different agencies that the 7 training was conducted? 8 A. I believe a -- I believe a copy of the PowerPoint 9 presentation would have been provided as an instructor 10 note -- or class notes. 11 Q. Who created the PowerPoint presentation? 12 A. It was a combined effort of multiple 13 investigators. 14 Q. Including yourself? 15 A. Yes. 16 Q. Were you in charge of the ultimate message or the 17 material that was produced in the PowerPoint 18 presentation? 19 A. No, I was not in charge at the time. 20 Q. Now, this training initiative in Exhibit 589, it 21 indicates that it targeted 44 key counties that either 22 have a history of voter fraud or the population of which 23 exceeds 100,000. Do you see that? 24 A. Yes, sir. 25 Q. Can you tell me, as of this date, how many</p>



<p style="text-align: center;">125</p> <p>1 different counties have been provided training by the 2 attorney general's office?</p> <p>3 A. As of today's date?</p> <p>4 Q. As of today's date.</p> <p>5 A. I couldn't -- I don't know.</p> <p>6 Q. More than 44 counties?</p> <p>7 A. I don't recall.</p> <p>8 Q. Okay. And just to be fair, and I'm trying to 9 understand this initiative. You were the lead 10 investigator of the supervisor of the SIU, correct?</p> <p>11 A. At the time I was the lieutenant and Greg Lucas 12 was the captain over the unit.</p> <p>13 Q. Okay. Would you have been involved in any 14 aspects of the training?</p> <p>15 A. Yes, I was involved in some of the training.</p> <p>16 Q. And that would have been to go out into the field 17 and provide the training?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. And how many investigators were 20 involved in providing training?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you have a general idea of the number of 23 investigators?</p> <p>24 A. It would just be a guess. And it would be, 25 perhaps ten.</p>	<p style="text-align: center;">127</p> <p>1 Through the SIU or through the OAG's office, was there a 2 training established for local election officials?</p> <p>3 A. No, sir.</p> <p>4 Q. Do you see in the fourth paragraph again, where 5 it's talking about 44 key counties including 18 cities 6 where the attorney general has previously investigated 7 or prosecuted alleged election code violations, do you 8 see that paragraph?</p> <p>9 A. Yes, sir.</p> <p>10 Q. The 44 counties contain 78 percent of eligible 11 registered voters in Texas. Do you see that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Any reason to dispute that?</p> <p>14 A. No, sir.</p> <p>15 Q. Underneath it indicates that, "earlier this 16 month, two Reeves County women were indicted on charges 17 of illegally possessing and transporting election ballots 18 of several voters." Do you see that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Looking at your spread sheet, can you identify 21 who the two women were?</p> <p>22 A. That would be Anita Baeza and Trinidad 23 Villalobos.</p> <p>24 Q. And you testified to that already, correct?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: center;">126</p> <p>1 Q. Okay. And so when we're talking about 44 2 counties and populations of 100,000 or more, can you 3 tell me the different types of agencies that were 4 targeted?</p> <p>5 A. We conducted a total of, I believe, approximately 6 80 presentations through out the state. And in those 7 presentations would have been police departments, 8 sheriff's departments, Texas highway patrol, local 9 district attorney investigators or county attorney 10 investigators or anybody who was a Texas peace officer.</p> <p>11 Q. Would that have involved local DAs or local 12 county attorneys as well?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What about election officials?</p> <p>15 A. No, sir.</p> <p>16 Q. So local election officials were not invited to 17 the training?</p> <p>18 A. This was a TCLEOSE, which is our State law 19 enforcement regulatory agency. It was designed to be a 20 peace officer presentation for training on election code 21 offenses.</p> <p>22 Q. Was there a training initiative established for 23 local election officials?</p> <p>24 A. No, not that I'm aware of.</p> <p>25 Q. Okay. And maybe I should be clearer on that.</p>	<p style="text-align: center;">128</p> <p>1 Q. Okay. So is this training initiative still in 2 place?</p> <p>3 A. No, sir.</p> <p>4 Q. And I believe I asked you what the number of 5 counties that actually received training was, and I 6 can't recall your answer?</p> <p>7 A. I don't recall.</p> <p>8 Q. And so generally would it have been -- how long 9 did this training initiative last?</p> <p>10 A. About a month.</p> <p>11 Q. Were there any other versions of this training 12 initiative that were put in place after this particular 13 training initiative? We're talking about, I believe 14 between 2005 and 2006.</p> <p>15 A. No, sir.</p> <p>16 Q. And the answer is no, no other training?</p> <p>17 A. No other training initiatives.</p> <p>18 Q. Okay.</p> <p>19 (Exhibit No. 590 was marked.)</p> <p>20 BY MR. GEAR:</p> <p>21 Q. Go ahead and take a look at Exhibit 590. When 22 you've had a chance we'll talk about it.</p> <p>23 A. Okay, sir.</p> <p>24 Q. Okay. The fourth paragraph, "and the fraud 25 continues since last summer. My office has been</p>



<p style="text-align: center;">129</p> <p>1 involved in several voter fraud cases across the state."</p> <p>2 Are there any -- from 2002 to 2006, March 1st 2006 the</p> <p>3 date of this article, are there any additional voter</p> <p>4 fraud prosecutions or convictions that you're aware of,</p> <p>5 based on this spread sheet?</p> <p>6 A. I think there were three additional persons</p> <p>7 charged with election misconduct.</p> <p>8 Q. And which three are you referring to?</p> <p>9 A. Willie Howard Ray, Jamillah Johnson and Melinda</p> <p>10 Hunter.</p> <p>11 Q. And they're in -- is it Bowie County?</p> <p>12 A. Bowie County.</p> <p>13 Q. Bowie County. Thank you. So let's talk about</p> <p>14 them real quick. Can you tell me what the allegation</p> <p>15 for Willie Ray, Jamillah Johnson and Melinda Hunter are?</p> <p>16 A. Yes, sir. This case was referred by the</p> <p>17 Secretary of State's office.</p> <p>18 Q. Okay.</p> <p>19 A. It involved the 2004 primary election. And the</p> <p>20 allegations were unlawfully obstructing a poll watcher,</p> <p>21 unlawfully witnessing the application of more than one</p> <p>22 application, unlawful assistance, security of ballots,</p> <p>23 ballot boxes and envelopes.</p> <p>24 Q. And would this have been a charge under chapter</p> <p>25 86 or chapter 64?</p>	<p style="text-align: center;">131</p> <p>1 Q. And again, these were by mail ballot violations?</p> <p>2 A. Yes, sir, 86006 is possession of a mail-in</p> <p>3 ballot.</p> <p>4 Q. Turning your attention back to Exhibit 590, there</p> <p>5 are a number of different discussions of indictments</p> <p>6 here. Reeves County, the mother of the 2004 primary</p> <p>7 candidate I believe you already testified that, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Nueces County, the four women allegedly targeting</p> <p>10 elderly voters during last year's local school board</p> <p>11 election, I believe you testified to that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Hardeman County commissioner pled guilty to</p> <p>14 illegally collecting mail-in ballots during the 2004</p> <p>15 election. And that would have been Johnny Wayne Akers,</p> <p>16 correct, for Hardeman County?</p> <p>17 A. Yes, sir.</p> <p>18 MR. SWEETEN: Bruce, we're getting close to</p> <p>19 1:15, so if you get to a logical stopping point.</p> <p>20 MR. GEAR: Did you want to go to 1:30?</p> <p>21 MR. SWEETEN: Well, we were going to try</p> <p>22 to -- we've got to be somewhere at 1:30. It's short,</p> <p>23 but yeah. Just, I mean, I don't want to stop you I'm</p> <p>24 just letting you know.</p> <p>25 MR. GEAR: I'll finish this and then we can</p>
<p style="text-align: center;">130</p> <p>1 A. These -- the allegations involved multiple</p> <p>2 chapters of the Texas election code.</p> <p>3 Q. Okay. And would any of these allegations have</p> <p>4 involved a charge of voter impersonation?</p> <p>5 A. The mail-in ballot applications and the unlawful</p> <p>6 assistance could lead to potential illegal voting</p> <p>7 charges under 64. However, only charges that were filed</p> <p>8 were under chapter 86.</p> <p>9 Q. Okay. So is it fair to say there were no charges</p> <p>10 filed under chapter 64 for any of the individuals who</p> <p>11 were indicted that you just identified?</p> <p>12 A. That is correct.</p> <p>13 Q. And ultimately, was there a conviction?</p> <p>14 A. Willie Ray pled to one count of possession of an</p> <p>15 official ballot or carrier envelope of another, which is</p> <p>16 a class B misdemeanor. She received a fine. I'm sorry.</p> <p>17 I'm having a hard time reading it.</p> <p>18 Q. It's small print.</p> <p>19 A. And then Jamillah Johnson was -- received</p> <p>20 six months deferred adjudication and a \$200 fine.</p> <p>21 Q. And again, that's not a criminal conviction?</p> <p>22 A. No. For the purpose it's not a final conviction.</p> <p>23 Q. Okay.</p> <p>24 A. And then Melinda Hunter received six months</p> <p>25 pretrial diversion.</p>	<p style="text-align: center;">132</p> <p>1 take a break.</p> <p>2 MR. SWEETEN: Sure. That's fine.</p> <p>3 BY MR. GEAR:</p> <p>4 Q. There's another indication here about, "I know</p> <p>5 local prosecutor's are dealing with voter fraud, too.</p> <p>6 The week before Christmas." And they talk about</p> <p>7 Hidalgo. Did I pronounce that correct?</p> <p>8 A. Yes, sir. Hidalgo County.</p> <p>9 Q. "Hidalgo County district attorney's office</p> <p>10 obtained indictments against nine people in connection</p> <p>11 with the McAllen City election in May of 2005." Would</p> <p>12 that be included on your spread sheet?</p> <p>13 A. No, sir. It's included on our spread sheet in</p> <p>14 referrals.</p> <p>15 Q. Okay.</p> <p>16 A. But not in prosecutions.</p> <p>17 Q. So is this one that you would have worked in</p> <p>18 conjunction with the local prosecutor. How does that</p> <p>19 work?</p> <p>20 A. Yes, sir. The Secretary of State's office</p> <p>21 referred it to us, as well as the Texas Ranger assigned</p> <p>22 to that jurisdiction. And then also the district</p> <p>23 attorney. So all three requested assistance.</p> <p>24 Q. Okay. Can you tell me on the referrals where</p> <p>25 these nine individuals would be identified?</p>



<p style="text-align: center;">133</p> <p>1 A. I would only have listed it once. 2 Q. Okay. 3 A. And it would be listed on Page 1 of election code 4 referrals to the office of the attorney general, 5 August 2007 to present. And it would be Page 1. And it 6 would be Hidalgo 2005 municipal election with the SOS 7 date of 6/16/2005. And the office was method of 8 returning marked ballot, unlawful assistance and 9 assisting voter. 10 Q. And that would have included the nine individuals 11 that the allegations pertained to? 12 A. Yes, sir. 13 Q. And this is -- the allegation at least is, method 14 of returning marked ballots, unlawful assistance, 15 assisting voter, illegal voting. Can you tell me what 16 the result of these allegations were? 17 A. I believe nine defendants were charged with a 18 variety of those offenses. 19 Q. Okay. 20 A. By the grand jury. They were indicted. And the 21 district attorney prosecuted that case. 22 Q. Go ahead. 23 A. I believe each of the indictments were 24 subsequently dismissed by the local district attorney in 25 the interest of justice or for insufficient evidence.</p>	<p style="text-align: center;">135</p> <p>1 Q. Okay. Out of those 20 referrals -- and that 2 would have included referrals from the Secretary of 3 State's office, as well as other sources as you've 4 testified here. How many of those dealt with voter 5 impersonation? 6 A. The one that I can definitely say dealt with 7 voter impersonation would be Melva Kay Ponce, through 8 Bee County. 9 Q. And we've talked about that, correct? 10 A. Yes, sir. On the other cases that involved 11 mail-in ballot fraud, there were no other persons 12 charged with voter impersonation. 13 Q. Okay. Which leads me to my next question 14 between -- other than Ms. Ponce who, I understand your 15 testimony about. Between 2002 and 2006, were there any 16 charges of voter impersonation? 17 A. No, sir. 18 Q. Were there any investigations of voter 19 impersonation? 20 A. When we examine allegations of mail-in ballot 21 fraud, we sometimes have allegations that the voter 22 didn't cast the mail-in ballot and that someone assisted 23 them with their mail-in ballot or took their blank 24 mail-in ballot. So there are potential cases that were 25 there.</p>
<p style="text-align: center;">134</p> <p>1 Q. Okay. So there were no convictions regarding 2 this matter? 3 A. I don't believe so. 4 Q. Okay. 5 MR. GEAR: I think this is a good place to 6 stop. 7 MR. SWEETEN: Okay. Very good. 8 (Brief recess.) 9 BY MR. GEAR: 10 Q. Back on the record. Back from lunch. All right. 11 I think we ended with Exhibit 590, which takes us up to 12 March 1st of 2006. So I just want to ask you some 13 general questions about your spread sheet. From 2002 to 14 March 1st of 2006, how many referrals, total, were 15 received in the office of the Attorney General? 16 A. From 2002 to 2006? 17 Q. Yes, sir. 18 A. 18 SOS referrals. 19 Q. And what about other? 20 A. That's not going to be as good of a number 21 because I can only distinguish elections prior to 2006, 22 so on the others, it would be two elections. 23 Q. So 20 referrals between 2002 to 2006. Is that a 24 fair estimate? 25 A. Yes, sir.</p>	<p style="text-align: center;">136</p> <p>1 Q. And those, again, would have been under 2 chapter 86, not chapter 64 because they're dealing with 3 mail-in ballots? 4 A. If you had a suspect who assisted a voter with 5 the mail-in ballot application and also the completion 6 of the ballot, and marked the ballot contrary to the 7 voter's intent or marked the ballot as if they were 8 themselves the voter as in the case of Melva Kay Ponce, 9 that would be under 64. 10 Q. Okay. And again, the question I have for you is, 11 that would have fallen under the by mail ballot system, 12 however? 13 A. Yes. You can commit illegal voting by -- you can 14 commit illegal voting by -- in the early voting mail-in 15 ballot portion, early voting polling place or actually 16 on election day itself. 17 Q. Okay. And so from 2002 to 2006 dealing with 18 early voting at the polling place, were there any 19 charges, referrals or allegations of voter 20 impersonation? 21 A. No, sir. 22 Q. Were there any prosecutions of voter 23 impersonation, either early voting, by mail ballot or at 24 the polling place between 2002 and 2006? 25 A. By our office or the State of Texas as a whole?</p>



<p style="text-align: center;">137</p> <p>1 Q. Start with your office. 2 A. No, sir. 3 Q. Are you aware of any in the State of Texas as a 4 whole? 5 A. No, sir. Our data only represents what was 6 referred to the Attorney General's office. 7 Q. Okay. And as I understand your testimony, the 8 referrals come from a variety of sources? 9 A. That's correct. 10 Q. So going forward from 2006 to the end of 2011, 11 can you tell me how many referrals you received in your 12 office between 2006 to 2011? 13 A. If you give me just a moment. 14 Q. Sure. I know it's going to take a little time. 15 Just for the record, I would indicate that the witness 16 is referring to his spread sheet. 17 A. Did you say the end date was 2011? 18 Q. Yes, sir. 19 A. 100 from the Secretary of State's office. 20 Q. And other? 21 A. Okay. Since 2006, we each received approximately 22 160 allegations of misconduct in elections in that time 23 frame. 24 Q. Total? 25 A. 168 from other sources outside of the SOS.</p>	<p style="text-align: center;">139</p> <p>1 A. Yes, sir, I believe so. 2 Q. Did I state that right, because I'm just trying 3 to make sure I'm clear on it? 4 A. There are some, if I may clarify? 5 Q. Please. 6 A. There are some elections, which I'm unable to 7 determine exactly what election actually involved. 8 There were complaints about unspecified elections. And 9 I did not include those. 10 Q. Okay. And where in the spread sheet are you 11 referring to? 12 A. If you would look at Page 11 of the election code 13 referrals office of the Attorney General, 2002 to the 14 present. 15 Q. Okay. 16 A. Undetermined in Nueces County, undetermined in 17 Duval County. 18 Q. I see what you're referring to. So there are two 19 referrals that are undetermined? 20 A. Well, on other pages there are as well, sir. 21 Q. Why don't you go ahead and add those in as well. 22 As far as referrals are concerned. I see one on 23 Page 10. 24 A. Looks like it would be, maybe five. 25 Q. Five?</p>
<p style="text-align: center;">138</p> <p>1 MR. ROSENBERG: 168? 2 A. 168. 3 Q. So total would be, if I'm counting correctly, 268 4 referrals between 2006 to 2011. Is that yes? 5 A. Of elections from that time frame -- in that time 6 frame, yes, sir. 7 Q. And I assume you -- counting on your spread sheet 8 you counted to the end of 2011? 9 A. I counted to 2010, 2009, 2008, 2007 elections. 10 Q. And you counted 2011 elections, correct? 11 A. The -- on the other category in the other sources 12 outside of the SOS, we didn't have any in 2011. 13 Q. Okay. Did you have any in 2011 for SOS? 14 A. Yes, sir. But I didn't count those. 15 Q. You did not count those. Go ahead and count 16 those as well? 17 A. Eight SOS referrals in 2011. 18 Q. So what does that take our total to, 268 plus 19 eight? 20 A. 268 plus eight? 21 Q. Uh-huh. 22 A. 276. 23 Q. 276. And that would represent all of the 24 referrals from any source to the OAG's office from 2006 25 to the end of 2011?</p>	<p style="text-align: center;">140</p> <p>1 A. Yes, sir. 2 Q. So adding those five to the 276, what is your 3 total? 4 A. It would be 281. 5 Q. So the 281 referrals, as I understand it, 6 represent all of the referrals from any source from 2006 7 to 2011, including undetermined election dates? 8 A. That were received by the Texas Attorney 9 General's office, yes, sir. 10 Q. Okay. Out of those 281, can you tell me how in 11 were actually investigated? 12 A. I can tell you that when I reviewed the number of 13 investigations that we conducted in the period from 2004 14 to present, the number is 186. 15 Q. The present, including 2012? 16 A. Correct, sir. 17 Q. Okay. So let's go with that for a minute. You 18 said from 2002 or 2004 to the present? 19 A. 2004 to the present. 20 Q. Okay. So from 2004 to the present, kind of 21 throws off our other estimate of referrals, but there 22 have been 186 that have been investigated? 23 A. Yes, sir. 24 Q. How many of those have resulted in -- of the 186 25 resulted in charges?</p>



141	143
1 A. We referred 62 cases for prosecution. 2 Q. Out of the 186 from 2004 to the present, how many 3 of those referrals dealt with voter impersonation? 4 A. I have to go and count them on the spread sheet. 5 Q. Please do. 6 MR. SWEETEN: Can you read the question back 7 while he's doing that? 8 (Requested question was read.) 9 BY MR. GEAR: 10 Q. I should be clear, how many of those were 11 allegations of voter impersonation? 12 MR. SWEETEN: Same thing. Do you understand 13 what he wants? 14 A. Of the prosecutions? 15 Q. (By Mr. Gear) Of the -- of the 186 that were 16 received as -- I'm sorry. I'm confused myself now. 17 MR. SWEETEN: Investigations. 18 BY MR. GEAR: 19 Q. Yeah. Of the 186 investigations, how many of 20 those were allegations of voter impersonation? 21 A. On the spread sheet that I maintain, voter 22 impersonation is included in the allegation of illegal 23 voting. I would have to go through and count those as 24 well. 25 Q. Help me understand when you're talking about	1 ineligible voter. In other cases, especially those that 2 are referred to the DA or other persons, they don't 3 break that down in the referral document. So this is 4 created off that referral document. 5 Q. Okay. So trying to move forward from the 6 referral, because we're talking about 2004 to the 7 present, correct? 8 A. Yes, sir. 9 Q. At some point is there a charging decision from 10 the OAG's office? 11 A. Yes, sir. 12 Q. How many of the -- this might be one step before 13 that. But how many of the 186 referrals were 14 investigated as voter impersonation? And let me narrow 15 that down even farther. Were investigated as voter 16 impersonation at the polling place. Can you identify 17 that? 18 A. I can identify that the defendants who have been 19 charged for that are Jack Carol Crowder out of Harris 20 County. Reyna Almanza out of Hidalgo County. Lorenzo 21 Antonio Almanza out of Hidalgo County. And I believe 22 Mary Comparin out of Bexar County. 23 Q. So as I understand your testimony, there are four 24 individuals that have been charged with voter 25 impersonation between -- are you limiting this testimony

<p style="text-align: center;">145</p> <p>1 with illegal voting of any type. 2 Q. That's out of the 186 referrals? 3 A. Well, the 133 would be part of the 186. 4 Q. Okay. Let's see if we can clarify this. 5 A. Sorry. 6 Q. We're getting into the numbers now. So you said 7 133 and 186 would be part -- 133 would be part of 186. 8 What time period are we talking about? 9 A. Of the spread sheet, would be 2002 to present. 10 Q. And so the total number of referrals between 2002 11 to the present that were received by the OAG's office 12 would have been what number? 13 A. The total number of SOS referrals in that time 14 frame was 133. 15 Q. Okay. And that's where the 133 came from. And 16 then the total number of other referrals? 17 A. I believe that number was 2 -- 18 Q. You gave me a number earlier of 276? 19 A. Yeah. That would be pretty close. 20 MR. SWEETEN: I'm sorry. What is 276? 21 MR. ROSENBERG: Can we clear this up or 22 we'll go crazy. 23 MR. GEAR: Yeah, I know. Right. I know. 24 MR. ROSENBERG: Do you mind if I just -- to 25 get the numbers here's --</p>	<p style="text-align: center;">147</p> <p>1 A. Those would be SOS referrals. 2 Q. Those were within the SOS. Okay. And five that 3 were undetermined? 4 A. Yes, sir, I believe so. 5 Q. So the total referrals from 2002 to 2000 -- to 6 date are 301? 7 A. The number that I have in my head is, I think 8 around 320. 9 Q. Okay. So we're missing some. That's the best I 10 can do. I turn it back. 11 MR. SWEETEN: Ezra, you were supposed to 12 clear this up. 13 BY MR. ROSENBERG: I tried. I tried. 14 FURTHER EXAMINATION 15 BY MR. GEAR: 16 Q. So 320 is the number that is in your head, would 17 represent all referrals from any source that were 18 received from the OAG's office. Is that accurate? 19 A. One more time. I'm sorry. 20 Q. The 320 number that you said you had in your head 21 would be reflective of all of the referrals from any 22 source that were received by the OAG's office regarding 23 election code violations? 24 A. Yes, sir. 25 Q. And that would have been from 2002 to the</p>
<p style="text-align: center;">146</p> <p>1 MR. SWEETEN: I don't mind. 2 MR. GEAR: Go ahead. That's fine. 3 CLARIFYING EXAMINATION. 4 BY MR. ROSENBERG: 5 Q. The 133 include -- from the Secretary of State, 6 includes 100 from 2006 to 2011; am I correct? Just from 7 the Secretary of State. 8 A. I believe the question earlier was 2006 to 9 present or to 2011? 10 MR. GEAR: Yes. 11 A. And I think that number I gave was, I believe 12 100. 13 Q. (By Mr. Rosenberg) Right. The 133 is from 2002 14 to the present just from the Secretary of State? 15 A. I believe that's correct, sir. 16 Q. There were an additional 178 referrals that 17 weren't from the Secretary of State from 2002 forward, 18 which were based on two between 2002 and 2006? 19 A. In 2005 there were two referrals from another 20 source. 21 Q. 168 between 2006 and 2011. Non-referrals -- let 22 me say, not from the Secretary of State, not referrals 23 from the Secretary of State. 24 A. As I can determine. 25 Q. Eight from the 2011 election?</p>	<p style="text-align: center;">148</p> <p>1 present, 2012? 2 A. Yes, sir. 3 Q. And so let's start from there since we've got 4 that number down. So we've got 320 total referrals. Of 5 those 320, how many were investigated? 6 A. That's where the number -- I have to clarify. I 7 have 186 investigations from 2004 to present. And the 8 reason for that is the report system that we used. I'm 9 able to query our report system that only goes back to 10 2004. 11 Q. So then based on your testimony, is it fair to 12 say that you do not know the number of investigations 13 between 2002 up to 2004? Let me ask that a different 14 way. Are there files maintained somewhere that would 15 tell us what happened between 2002 and 2004 regarding 16 referrals? 17 A. I believe that the records retention for election 18 code offense, I believe is like five years. And so I 19 only can give you a number of the number of 20 investigations that we conducted based on our report 21 writing system that goes from 2004 to present. 22 Q. So again, not to belabor the point, I'm just 23 trying to make sure I understand your testimony. If I 24 was to ask you or anyone within your office to go back 25 and look at either electronic files or paper files for</p>



<p style="text-align: center;">149</p> <p>1 investigations between 2002 to 2004, you would not be 2 able to do that? 3 A. I don't know. 4 Q. Is it fair to say that in preparation for this 5 deposition you didn't look at any files, either 6 electronic or paper, between 2002 up to 2004? 7 A. I was able to query all of our election cases 8 which was through our system -- which showed me cases 9 from 2004 to present. 10 Q. So is that a yes or no? I'm sorry. 11 A. I did not look at any files -- investigative case 12 files from 2002 to present -- or to 2004. 13 Q. So we're still working with the 320 number, which 14 would be reflective of 2004 to the present, correct? 15 A. No. Actually that number would be -- that time 16 frame -- the 320 encompasses -- 17 Q. 2002? 18 A. 2002 to the present. 19 Q. Now, I'm sorry. I talked over you. That was 20 2002 to the present? 21 A. Yes, sir. 22 Q. I think we're getting there. All right. So of 23 the 320 referrals from all sources to the OAG's office 24 from 2002 to the present, how many of those were 25 investigated?</p>	<p style="text-align: center;">151</p> <p>1 Q. Which would be a reason not to charge? 2 A. That's correct. 3 Q. Okay. So -- and now you've used the term "those 4 are the four, "and you're talking about Mr. Crowder, 5 Mary Compartin and can you remind me of the other two 6 names? 7 A. Reyna Almanza and Lorenzo Antonio Almanza. I 8 think his name was junior. 9 Q. Okay. Let's first start with Mr. Crowder. Can 10 you tell me when that investigation occurred? For the 11 record, the witness is referring to his spread sheet. 12 And I just direct your attention to Page 3 of the Texas 13 code of referrals to the office of Attorney General 14 prosecutions resolved, Bates stamped TX 00056820. I 15 believe it's the third. 16 A. Right. This case was referred to our office by 17 the Secretary of State's office. 18 Q. And when was it referred? 19 A. It would have been -- the SOS document date was 20 1/14/09. I mean, the date of the referral from the 21 Secretary of State's office was January 14, 2009. 22 Q. 2009. What election -- 23 A. I'm sorry. 24 Q. Go ahead. 25 A. It involved the 2008 and 2000 -- primary and</p>
<p style="text-align: center;">150</p> <p>1 A. I believe 186. 2 Q. Okay. Of those 186 referrals that were 3 investigated from 2002 to the present, how many of those 4 dealt with voter impersonation at the polling place? 5 A. I can clearly identify four. 6 Q. And you've done that already on the record? 7 A. Yes, sir. 8 Q. Other than those four, are you aware of any 9 others? 10 MR. SWEETEN: And you're asking allegations, 11 just so I'm clear. 12 MR. GEAR: No. I'm asking about 13 investigations. 14 MR. SWEETEN: Investigations. Okay. 15 A. There are more. But those four are the ones that 16 were charged. I do not know the number off the top of 17 my head for the other ones that weren't charged. 18 Q. (By Mr. Gear) And as we've -- as you've 19 testified before, that a referral can come into your 20 office and not result in a charge, correct? 21 A. That's correct. 22 Q. And that they can come in your office and not be 23 supported by, either the facts of the law, would that be 24 accurate? 25 A. That's correct.</p>	<p style="text-align: center;">152</p> <p>1 general elections. 2 Q. From the spread sheet referring to Page 3, I see 3 it indicates the primary election. Where do you pick up 4 the general election? 5 A. Because that's the actual election that he was 6 charged for illegally voting in and impersonating in. 7 Q. In the general election? 8 A. The actual referral indicates there were deceased 9 voters voting both the general and primary elections. 10 Q. And is that indicated in the spread sheet? 11 A. It's indicated -- yes, sir. In the referral 12 spread sheet. 13 Q. And which page is that? 14 A. That would be Page 3 of the referral sheet, 15 spread sheet. 16 Q. Can you tell me which -- 17 A. The -- eight from the bottom. And it says, 18 "Harris 2008, primary and general elections, 1/14/09, 19 deceased voters voting." 20 Q. And how do you know that this deals with 21 Mr. Crowder? 22 A. Because that -- I just know that that's the 23 referral that we got which we initiated the 24 investigation at which Jack Carol Crowder was 25 subsequently charged.</p>



<p>153</p> <p>1 Q. Okay. And so can you tell me what the facts are 2 for that case? 3 A. A group of citizens had obtained voter 4 registration records and then compared that to the 5 actual voting records in those two elections. And they 6 had come up with a list of names that they suspected 7 were potential dead persons voting. They then presented 8 that information to the Secretary of State's office who 9 evaluated and then sent it to us for investigation.</p> <p>10 Q. And the group of citizens that you're referring 11 to? 12 A. I'm sorry. I don't know their name. 13 Q. Was it an actual group that made this referral or 14 was it -- or are you just referring to that, generally a 15 group of citizens? 16 A. I believe the SOS referral itself actually says 17 the name of the group. 18 Q. Is that indicated anywhere in your spread sheet? 19 A. No, sir. 20 Q. Do you know if that name would have been the King 21 Street Patriots? 22 A. No, I don't believe that was it. 23 Q. But as you sit here today, you don't know the 24 name of the group? 25 MR. SWEETEN: Objection' asked and answered.</p>	<p>155</p> <p>1 the third. 2 Q. Okay. And do you know if the father has -- what 3 is the suffix on his last name? 4 A. I don't remember. 5 Q. Okay. And you said that he presented some form 6 of identification when he voted? 7 A. No, sir. He presented his deceased father's 8 voter registration certificate. 9 Q. And is that indicated anywhere here on your 10 spread sheet? 11 A. No, sir. 12 Q. And how would I know -- how would I determine 13 exactly what happened on the day of that election? Are 14 there documents, reports that are available that would 15 clarify that? 16 A. Yes, sir. The combination form that was used at 17 the polling place indicates the kind of documentation 18 that the voter used to sign up at the polling place. It 19 generally indicates if they presented a voter 20 registration certificate or some other form of ID. I 21 believe the charging document itself, the indictment 22 that Jack Carol Crowder -- it actually mentions that he 23 used his father's voter registration certificate to cast 24 a ballot in that election as well. 25 Q. Did you actually conduct this investigation?</p>
<p>154</p> <p>1 A. No, sir, I do not know the name of the group. 2 Q. (By Mr. Gear) So they conducted their own, I 3 guess informal investigation, and referred it on to the 4 Secretary of State's office. Can you tell me what the 5 facts are of the case? 6 A. Yes, I can. Jack Carol Crowder -- Jack Carol 7 Crowder's father died preceding the election and his 8 son, Jack Carol Crowder also, used his voter 9 registration card to vote in that election. The 10 investigation revealed that at no time did Jack Carol 11 Crowder attempt to register to vote, either through the 12 signing up for his Texas driver's license or by actually 13 completing a voter registration card. And he was 14 interviewed and advised that he didn't complete a voter 15 registration card. He thought that he had asked to be 16 registered on his Texas driver's license. 17 Q. So let me flesh out the facts now. Jack Carol 18 Crowder, the individual who voted, has the same last 19 name as his father who was deceased? 20 A. That is correct. 21 Q. And the same first name as well? 22 A. That's correct. 23 Q. Is there any difference in the Jack Carol 24 Crowder, Jr., Jack Carol Crowder the third -- 25 A. I think Jack Carol Crowder the actual suspect is</p>	<p>156</p> <p>1 A. No, but I assisted in it. 2 Q. What was the basis of the group believing or 3 attempting to determine that Mr. Crowder may have been 4 using a deceased voter certificate, in this case his 5 father's? 6 A. I don't know what the group -- or why they did 7 what they did. 8 Q. And he was ultimately indicted? 9 A. Yes, sir. 10 Q. What was he indicted for? 11 A. The Harris County district attorney's office 12 indicted him for illegal voting, for impersonating his 13 deceased father. 14 Q. Was there a resolution to the case? 15 A. Yes, sir, there was. 16 Q. And what was the resolution? 17 A. He pled guilty to one count of fraudulent use of 18 identifying information and received one-year deferred 19 adjudication and a \$200 fine. 20 Q. Fraudulent use of -- did you say of information? 21 A. Fraudulent use of identifying information. 22 Q. What chapter would that have been under? 23 A. That's actually in our Texas penal code. 24 Q. And can you explain that for those of us who 25 don't know?</p>



157	159
1 A. Yes, sir. If a person possesses identifying 2 information of another and uses it with intent to harm 3 or defraud, they can be charged under the penal code as 4 well. And identifying information under Texas law would 5 be a unique identifying number to that person, such as a 6 Texas driver's license, voter identification number, a 7 Texas voter ID, a social security number or a date of 8 birth. 9 Q. So as I understand it, there was no conviction 10 under chapter 64, which as I understand it, identifies 11 voter impersonation? 12 A. No, sir. He pled guilty to possession and use of 13 identifying information. 14 Q. And again, would that have been under chapter 64? 15 A. No, sir. That's a penal code offense. 16 Q. This may be a silly question, but I'm just trying 17 to understand the range of this. What would be the 18 basis of pleading under the penal code versus pleading 19 under the election code? 20 A. It would be speculation on my part. I don't know 21 why Harris County made the decision to reduce the 22 offense. But illegal voting is a third degree felony 23 and -- which is punishable by up to two to 10 years in 24 the State penitentiary. And a person who has no 25 criminal history whatsoever, might be charged for a	1 Q. Are you aware of whether or not Mr. Crowder ended 2 up serving any time in jail? 3 A. I'm not aware. 4 Q. So the end result in this is, if I understand 5 your testimony, if he successfully completed the 6 deferred adjudication, then he would not have been 7 convicted of a crime? 8 A. That's correct. 9 Q. You also said Mary Comparin. Can you tell me, 10 based on your spread sheet, when that referral came into 11 the office? 12 A. This referral is going to be found in the other 13 category, as it was referred by law enforcement. And so 14 I don't have a date in the spread sheet that says the 15 actual date of the referral. 16 Q. What page are you referring to, if any? 17 A. If you'll just give me a moment I'll look for it. 18 Q. Sure. 19 A. I believe I'm referring to Page 9 of the election 20 code referrals of the office of Attorney General, 2002 21 to present. That says, "Bexar multiple primary and 22 general elections, other illegal voting." 23 Q. And again, how do you know that this particular 24 referral deals with Mary Comparin? 25 A. Because the DPS trooper who discovered this case

<p>161</p> <p>1 Q. You said, "2008 general"?</p> <p>2 A. Yes.</p> <p>3 Q. And you refer to your spread sheet. Do you see</p> <p>4 Ms. Comparin's name on here anywhere?</p> <p>5 A. Yes, sir. It's on Page 1 of charges pending</p> <p>6 resolution.</p> <p>7 Q. Would this charge still be pending at this point?</p> <p>8 A. Yes, sir, it is.</p> <p>9 Q. And she was charged with illegal voting?</p> <p>10 A. Yes, sir, in that election.</p> <p>11 Q. And is this set for trial? Can you tell me where</p> <p>12 it is in the process?</p> <p>13 A. I think she's currently been found by the court</p> <p>14 as -- I don't know exactly the term. But she's --</p> <p>15 Q. Give it a shot.</p> <p>16 A. Mentally incompetent.</p> <p>17 Q. That would be a legal term. Do you know if this</p> <p>18 case -- if there's any intention to proceed to trial in</p> <p>19 this case?</p> <p>20 A. I think that we have to -- the State has to find</p> <p>21 that she is competent through a court before it can</p> <p>22 proceed to trial. I think they have regular settings to</p> <p>23 determine that.</p> <p>24 Q. And have you gone through that process?</p> <p>25 A. I personally haven't. But I believe that the</p>	<p>163</p> <p>1 Q. Okay. Well, let's break that out. You said</p> <p>2 there's two cases. Did both of them deal with the 2009</p> <p>3 school district election?</p> <p>4 A. Yes, sir, they did.</p> <p>5 Q. And they both deal with Mr. Almanza?</p> <p>6 A. Lorenzo Antonio Almanza, Jr.</p> <p>7 Q. Junior, okay.</p> <p>8 A. And his mother, Reyna Almanza.</p> <p>9 Q. And what are the facts for that case or those</p> <p>10 cases, I guess properly stated?</p> <p>11 A. Lorenzo Almanza and his mother went into the</p> <p>12 Progresso school district to vote in that election.</p> <p>13 Lorenzo Almanza had already voted days prior to that</p> <p>14 election and used his brother's voter registration</p> <p>15 certificate to cast a second ballot in that election.</p> <p>16 His brother was an ineligible voter because he was</p> <p>17 incarcerated in San Antonio for a felony offense at the</p> <p>18 time.</p> <p>19 Upon presenting the card to the elections</p> <p>20 official, a poll watcher who was present recognized the</p> <p>21 name of the person who was presenting themselves to vote</p> <p>22 with the card and said that's not that person. The</p> <p>23 election judge actually contacted the county elections</p> <p>24 department to determine what to do because he wasn't</p> <p>25 familiar what to do in such a circumstance. And the</p>
<p>162</p> <p>1 prosecutor assigned has.</p> <p>2 Q. What was the end result of that?</p> <p>3 A. I think she's been found incompetent.</p> <p>4 MR. SWEETEN: Bruce, I'm going to, at this</p> <p>5 point, I'm going to designate any discussion of an</p> <p>6 active case, Ms. Comparin's case as under the protective</p> <p>7 order, just this section related to questioning on her.</p> <p>8 BY MR. GEAR:</p> <p>9 Q. Let's move forward to the next -- there's two</p> <p>10 left, correct?</p> <p>11 A. Yes, sir, I believe so.</p> <p>12 Q. And did you say Almanza?</p> <p>13 A. Almanza.</p> <p>14 Q. Almanza. Can you tell me when that referral came</p> <p>15 into your office?</p> <p>16 A. I believe it was in 2009.</p> <p>17 Q. Can you tell me what page you're referring to on</p> <p>18 your spread sheet?</p> <p>19 A. It would be Page 10 of the election code</p> <p>20 referrals of the office of the Attorney General, 2002 to</p> <p>21 the present. And it would be the first entry, Hidalgo</p> <p>22 2009 school district election, voter -- illegal voting.</p> <p>23 Q. Is this case still pending?</p> <p>24 A. There are actually two cases. One of the cases</p> <p>25 is pending.</p>	<p>164</p> <p>1 elections department told the election judge at the</p> <p>2 polling place, since he's presented a lawful voting</p> <p>3 registration certificate he must be allowed to vote.</p> <p>4 The poll watcher was emphatic that he wasn't the</p> <p>5 person and Reyna Almanza, the mother, interjected</p> <p>6 herself and vouched for his identity as being Lorenzo</p> <p>7 Antonio -- or Orlando Almanza, his brother.</p> <p>8 Q. So Reyna Almanza, the mother, has not been</p> <p>9 charged with voter impersonation?</p> <p>10 A. No. She was charged as a party to and illegal</p> <p>11 voting impersonation.</p> <p>12 Q. So as far as -- as for as Mr. Almanza, that's</p> <p>13 still an allegation at this point, correct?</p> <p>14 A. Yes, sir. He was indicted and he is currently</p> <p>15 awaiting trial.</p> <p>16 Q. Do you know the trial date?</p> <p>17 A. No, sir. He was subsequently rearrested for a</p> <p>18 federal violation. And so I think he's in the custody</p> <p>19 of the US government at this time.</p> <p>20 Q. Is there a scheduled trial date that you're aware</p> <p>21 of?</p> <p>22 A. No, not that I'm aware of.</p> <p>23 Q. When you say, "he's in the custody of the US</p> <p>24 government," is he in state, out of state?</p> <p>25 A. I believe he is, the last check I heard, he was</p>



<p style="text-align: center;">165</p> <p>1 in the South Texas federal detention facility.</p> <p>2 MR. SWEETEN: Again, because this is an open</p> <p>3 case, I'm going to designate this portion of the</p> <p>4 testimony, the specifics about it as eyes only,</p> <p>5 protective order.</p> <p>BY MR. GEAR:</p> <p>Q. At this point I think we went through all four. But let me just if back to the mother. And her first name, again, was?</p> <p>A. Reyna Almanza.</p> <p>Q. Okay. So she was charged as a party to, but did not actually, based on the allegations, cast a vote in someone else's name. Is that accurate?</p> <p>A. Yes. She did not cast a ballot in that election.</p> <p>Q. She didn't vote at all in that election?</p> <p>A. I don't know at this time, sir.</p> <p>Q. Did she attempt to vote at all during that election?</p> <p>A. I'm not sure she's a US citizen.</p> <p>Q. I don't know if that answers the question. Are you aware of whether or not she attempted to vote?</p> <p>A. I didn't look. I don't know.</p> <p>Q. So in summary, I believe you said the total from 2002 to the present is 320 referrals, correct?</p> <p>A. Yes, sir, I believe that's correct.</p>	<p style="text-align: center;">167</p> <p>A. She was convicted by a jury in Brooks County on November 16, 2011 and sentenced to two years in prison, which was suspended for five years of probation. And as a condition of the punishment, she was ordered to serve 90 days in jail, and as a condition of the probation just pay \$313 in court costs.</p> <p>Q. Which page of the spread sheet are you referring to?</p> <p>A. I'm referring to the election code referrals office of the Attorney General's prosecution resolve. And I'm referring to Page 4, Reyna Almanza is the third from the bottom.</p> <p>Q. I apologize. Can you tell me the facts of this case?</p> <p>A. That is the mother who interjected herself on behalf of her son who was committing the voter impersonation.</p> <p>Q. And she was charged as party to?</p> <p>A. Yes, sir. And if I may clarify one thing.</p> <p>Q. Please.</p> <p>A. I left off Delores McMillian. She, too, was charged with voter impersonation or attempted voter impersonation.</p> <p>Q. And she appears on Page 4 of your spread sheet for --</p>
<p style="text-align: center;">166</p> <p>Q. And out of those 320 referrals, there have been four charges of voter impersonation at the polls, if I understand your testimony correctly?</p> <p>A. Yes, sir. I believe there have been four charges at the polling place.</p> <p>Q. And actually, one of those charges was a party to, and that person did not, in fact, attempt to cast a ballot as you know, as you sit here?</p> <p>A. I don't know if she did or not.</p> <p>Q. Out of the four charges, how many convictions have there been for voter impersonation at the poles?</p> <p>MR. SWEETEN: Does that include pleas or are you talking about convictions only by jury?</p> <p>MR. GEAR: Let's make it a general question including pleas.</p> <p>BY MR. GEAR:</p> <p>Q. How many of the four charges have actually resulted in a conviction, including a plea of voter impersonation at the polling place?</p> <p>A. The only person that comes to mind is Reyna Almanza as voter impersonation.</p> <p>Q. Has that gone to trial?</p> <p>A. Oh, yes, sir.</p> <p>Q. What was the result of that trial? I'm sorry. I might have glazed over that one?</p>	<p style="text-align: center;">168</p> <p>A. Yes, sir.</p> <p>Q. Prosecutions resolved?</p> <p>A. Yes, sir.</p> <p>Q. Can you tell me, just so we're clear, Delores McMillian, was the election that the referral came from is the 2010 primary election?</p> <p>A. In Dallas County. Correct, sir.</p> <p>Q. In Dallas County. Actually, Dallas County/Rockwell as I see it here?</p> <p>A. The two counties, under Texas State law, when you prosecute an election code offense, you can take it to an adjoining county.</p> <p>Q. Okay. And so can you tell me exactly what the charges were for Delores McMillian?</p> <p>A. She was charged for attempted voter impersonation -- she was charged for attempted illegal voting, voter impersonation.</p> <p>Q. All right. And can you tell me what the facts of this case are?</p> <p>A. Delores McMillian and her mother, who is now deceased, are both elections officials working at a polling place in Dallas County during that election. Both Delores and her mother used other voter's information to cast ballots on behalf of those -- on behalf of these other people.</p>



<p style="text-align: center;">169</p> <p>1 Q. Are we talking about at the polls or by mail? 2 A. At the polls. 3 Q. Okay. I'm not clear on the facts. You say, 4 "they used other people's information to cast ballots at 5 the polls." Can you clarify that for me? 6 A. Yes. Their voter -- their voter registration 7 numbers. 8 Q. And how did they -- how did they do this? 9 A. I don't know off the top of my head. 10 Q. Is there a file that would clarify that? 11 A. Yes, sir. There's an investigative file that 12 would be able to clarify that. 13 Q. And was there a plea in this case? 14 A. Yes, sir, I believe so. 15 Q. And what was the plea? 16 A. She pled guilty to one count of attempted illegal 17 voting and served -- was sentenced to one year probation 18 and paid \$227 in court costs. 19 Q. So you said they used other people's voter 20 registration -- their registration information. Am I 21 saying that correctly? 22 A. Yes, sir, I believe so. 23 Q. How many people are we talking about that were 24 involved in this? 25 A. I believe Delores used one person's identity.</p>	<p style="text-align: center;">171</p> <p>1 you either have to provide the certificate or some other 2 form of identification for that purpose. So I'm 3 referring to the combination form. 4 Q. So in the case where you have an election 5 official using -- impersonating another voter, is that 6 something that would be prevented by -- if SB 14 was 7 implemented? 8 MR. SWEETEN: Objection; calls for 9 speculation. You can answer. BY MR. GEAR: 10 Q. You can answer. 11 A. I don't know. 12 Q. But when you've got the election official who is 13 in charge of attempting to identify and prevent voter 14 impersonation, actually engaging in the voter 15 impersonation, who, if anyone, is left to prevent that 16 from happening? 17 MR. SWEETEN: Same objection. 18 A. I don't really know. 19 Q. (By Mr. Gear) Delores pled guilty to illegal 20 voting. Do you know what chapter she entered a plea 21 under? 22 A. 64012. 23 Q. So was the ultimate conviction voter 24 impersonation? 25</p>
<p style="text-align: center;">170</p> <p>1 And I do not remember how many her deceased mother used. 2 She died during the course of the investigation. 3 Q. So that allegation was never proven? 4 A. She was never charged for it. 5 Q. Do we know the name of the voter that Delores 6 allegedly used? 7 A. I don't know the name today. 8 Q. Do you know how she obtained the voter 9 registration information or the voter's information? 10 A. I'm sorry. I don't know right now. 11 Q. And when you say, "attempted illegal voting," do 12 you know if she actually cast a ballot? 13 A. It was actually stopped by a fellow elections 14 worker. 15 Q. And can you tell me the facts behind that? 16 A. No, sir, I can't. Other than to say that I 17 believe the other elections worker discovered that these 18 names appeared on the list prior to the opening of the 19 polling place. 20 Q. When you say, "the list," are you talking about 21 the voter registration polls? 22 A. No, sir. The combination form at each polling 23 place. And in Texas when a voter presents themselves to 24 vote, there is a combination form which election 25 officials complete and then the voter has to sign. And</p>	<p style="text-align: center;">172</p> <p>1 A. It's attempted illegal voting, voter 2 impersonation. I'm sorry. If I could clarify. The 3 judgments -- the judgments sometimes say the entire 4 title of the offense or sometimes just give the title. 5 In other words, illegal voting chapter 64012. Didn't 6 break it down to Section 1, an ineligible voter, 7 Section 2, voting twice in an election, Section 3, 8 marking a ballot contrary. So I believe the judgment 9 says attempted illegal voting. 10 Q. Are there any of the four that you've actually 11 identified here today that actually have a judgment that 12 indicates voter impersonation? 13 A. I would have to looking back at the judgments and 14 sentence. 15 Q. Of the five. I'm sorry. Of the five you added 16 additional? 17 A. I'm sorry, sir. I would have to go back and look 18 at the judgments and sentences. 19 Q. So as you sit here today, you don't know? 20 A. Yes, sir. 21 Q. Why don't we take a quick break if you don't 22 mind? 23 MR. SWEETEN: In the break, can we get a 24 copy of this? So I can look at it, too. 25 MR. GEAR: Sure.</p>



<p>173</p> <p>1 (Brief recess.)</p> <p>2 BY MR. GEAR:</p> <p>3 Q. Back on the record. Does the OAG's office have</p> <p>4 primary jurisdiction or direct jurisdiction over voter</p> <p>5 impersonation cases?</p> <p>6 A. I believe it has, going back to what I kind of</p> <p>7 testified earlier, it depends on the type of election</p> <p>8 that's conducted. A single jurisdiction versus a</p> <p>9 multi-jurisdiction case. I think the attorney general's</p> <p>10 office, under the Texas election code, can advise a</p> <p>11 district attorney that they would be conducting the</p> <p>12 prosecution. I think that the attorney general's</p> <p>13 office, under the chapter 273, can direct a DA or county</p> <p>14 attorney to assist in the prosecution of the case as</p> <p>15 well.</p> <p>16 Q. So as I understand your testimony, out of all of</p> <p>17 the referrals that have been received by the OAG's</p> <p>18 office, there have been five that were in some form</p> <p>19 voter impersonation?</p> <p>20 A. Yes, sir.</p> <p>21 Q. At the poles; is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Are you aware of any investigations of voter</p> <p>24 impersonation that did not -- that were not referred to</p> <p>25 the OAG's office?</p>	<p>175</p> <p>1 you create a referral system with the 44 different</p> <p>2 counties? Did you set up a way to communicate with them</p> <p>3 regarding voter fraud in the State of Texas?</p> <p>4 A. If my memory serves me correctly, we took a look</p> <p>5 at the referrals that our office had and then looked at</p> <p>6 them geographically and divided the state based upon the</p> <p>7 council of government divisions. Because our hope was</p> <p>8 to utilize the council of governments to help facilitate</p> <p>9 the training.</p> <p>10 Q. And so just so I'm clear, on the record, "the</p> <p>11 council of governments," what is that?</p> <p>12 A. Council of government is -- I don't know if it's</p> <p>13 an actual political subdivision of the State. But it is</p> <p>14 a -- it is a group of counties and municipalities that</p> <p>15 work together through a council of governments to share</p> <p>16 resources.</p> <p>17 Q. And when you talked -- or when you discussed the</p> <p>18 initiative, was there any specific training given to the</p> <p>19 council of governments?</p> <p>20 A. No. When I mentioned the council of governments,</p> <p>21 we were hoping to -- council of governments provide a</p> <p>22 lot of law enforcement training throughout the state.</p> <p>23 And many of them actually have their own police</p> <p>24 academies.</p> <p>25 Q. Okay.</p>
<p>174</p> <p>1 A. Yeah. I'm only aware of cases that were referred</p> <p>2 to our office.</p> <p>3 Q. And again, when we're talking about referrals,</p> <p>4 we're talking about from multiple sources?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Including police departments, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Local election officials?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Local DA's and prosecutor's?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Are you aware of any convictions of voter</p> <p>13 impersonation other than the five cases that we've --</p> <p>14 you've talked about here today, on the record?</p> <p>15 A. Yeah. I don't really think there is a way to</p> <p>16 know because I don't think -- you know, DA's offices</p> <p>17 across the state don't report their -- don't report</p> <p>18 their prosecutions to our office. So I don't know any</p> <p>19 other cases in Texas.</p> <p>20 Q. Well, let me explore that for a second. At some</p> <p>21 point there was an initiative that reached out to at</p> <p>22 least 44 different counties or populations over 100,000</p> <p>23 or more, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And did you -- "you," meaning your office. Did</p>	<p>176</p> <p>1 A. Which are State subsidized. So we were hoping to</p> <p>2 utilize their academies to help facilitate the training.</p> <p>3 Q. And did you?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So as you sit here today, other than the five</p> <p>6 that you've testified about, the five voter</p> <p>7 impersonation cases that you've testified about, you're</p> <p>8 unaware of any others?</p> <p>9 A. Yes, sir. I don't have any knowledge of any</p> <p>10 cases that the local DA's have prosecuted.</p> <p>11 Q. Have you attempted to determine if there's been</p> <p>12 any prosecutions by local DA's regarding voter</p> <p>13 impersonation claims?</p> <p>14 A. No, sir.</p> <p>15 Q. Have you attempted, and "you," being your office,</p> <p>16 have you attempted to set up a system by which the local</p> <p>17 DA's and prosecutors report to your office regarding</p> <p>18 voter claims in general?</p> <p>19 A. No, sir, not that I'm aware of. I would say that</p> <p>20 it's statutorily required that if a DA's office is going</p> <p>21 to do an investigation, that they notice the Secretary</p> <p>22 of State's office if it involves a case.</p> <p>23 Q. Okay. And so when the Secretary of State's</p> <p>24 office is noticed, that may, in fact, result in a</p> <p>25 referral to your office?</p>



<p style="text-align: center;">177</p> <p>1 A. No, it wouldn't. 2 Q. Can you tell me what the process is? 3 A. If a local DA advises the Secretary of State's 4 office that they're going to investigate and prosecute a 5 case, it wouldn't generate a referral. Because we limit 6 to those cases that -- the SOS, I believe, would refer a 7 case to us if the local jurisdiction wasn't going to 8 handle it. 9 Q. Would -- I understand that it may not necessarily 10 generate a referral. Would it generate communication 11 between the Secretary of State's office and your office 12 regarding that potential prosecution? 13 A. No, sir, I don't believe so. 14 (Exhibit No. 591-592 was marked.) 15 BY MR. GEAR: 16 Q. I'm showing you what's been marked as 17 Exhibit 591. Take a look at it and then once you've had 18 a chance to review it, we can talk about it. 19 A. Do you want me to read the whole thing. 20 Q. No. And actually, why don't I ask you the 21 question. Have you seen this report before? 22 A. No, sir. 23 Q. Do you know what this is? 24 A. It's titled the House Committee on elections 25 Texas House of representative interim report. A report</p>	<p style="text-align: center;">179</p> <p>1 A. I believe he would have been the Deputy Attorney 2 General for the office of the attorney general from 2010 3 to 2007, is my best guess. 4 Q. Were you aware that he provided testimony in 2008 5 before the House Committee on elections? 6 A. I wasn't aware that he provided testimony to the 7 House Committee. 8 Q. Were you aware that he provided testimony 9 regarding prosecution rates of voter fraud in the State 10 of Texas? 11 A. I know that he provided testimony to the Senate 12 Committee in 2009. 13 Q. Okay. Not so much asking you about the -- have 14 you seen this document. I really want to focus on the 15 substance of his testimony and ask you a few questions 16 about that. On the -- in the second paragraph, 17 prosecution rates and fraud in Texas, do you see where 18 it says, "that what the committee found is most election 19 fraud happened in Texas occurs with the absentee or 20 mail-in ballot system." Do you agree with that 21 statement? 22 A. I would -- actually, I don't know that I can 23 totally agree with that statement. 24 Q. Why not? 25 A. Because that's just the offenses that we have</p>
<p style="text-align: center;">178</p> <p>1 to the Texas House of -- to the House of 2 Representatives, 81st Legislature. 3 Q. And I direct your attention to Page 37, where it 4 says prosecution rates and fraud in Texas. 5 MR. SWEETEN: Counsel, is this excerpted. 6 This isn't the full thing; is that right. 7 MR. GEAR: I do not believe it's the full 8 thing. 9 MR. SWEETEN: So we've got an excerpted. 10 Okay. Page 37, now. Is that what you said. 11 MR. GEAR: Yes. 12 BY MR. GEAR: 13 Q. Who is Eric Nichols? 14 A. Eric Nichols used to be the deputy for the office 15 of the Attorney General. 16 Q. Have you ever had any communications with Eric 17 Nichols regarding voter fraud? 18 A. Oh, yes, sir. He would have been my supervisor. 19 He supervised all criminal justice divisions within the 20 office of the attorney general. 21 Q. And he supervised prosecutions of voter fraud 22 claims? 23 A. Yes, sir. 24 Q. And when would he have been your supervisor, if 25 you can give me the dates?</p>	<p style="text-align: center;">180</p> <p>1 detected and prosecuted. 2 Q. So specifically dealing with referrals to the 3 OAG's office, would you agree that the majority of the 4 referrals deal with the by mail ballot system? And I 5 understand that there could be a variety of violations 6 within that system. 7 A. To me, a majority means more than 50 percent. 8 And I don't know that the main-in ballot fraud 9 represents 50 percent or more of our election code 10 referrals. I do believe that it is a significant 11 portion of the referrals. 12 Q. Well and you -- you maintain the spread sheets? 13 A. Yes, sir. 14 Q. You update it whenever a referral comes in, and I 15 believe you testified to monthly? 16 A. Yes, sir. 17 Q. If you looked at your spread sheet, could you 18 tell me what percentage of the cases involved deal with 19 the by mail ballot system? 20 A. Yeah. I could go through and do a quick analysis 21 or an analysis. I don't know how quick. 22 Q. Well, in looking at your spread sheet, could you 23 give me a general number, percentage? 24 A. I would say it's probably close to 50 percent. 25 It's not a majority, but it's close.</p>



<p style="text-align: center;">181</p> <p>1 Q. Okay. And so the other 50 percent, what would 2 you say that...</p> <p>3 A. That comprises illegal voting as a whole. And 4 then other types of poll place violations. And then 5 election misconduct by actual elections officials, 6 campaign finance violations, those kinds of things.</p> <p>7 Q. So the charge of voter impersonation at the 8 polling place, what percentage would you say that makes 9 up of the 320 referrals that you've received in the 10 OAG's office?</p> <p>11 A. A small portion.</p> <p>12 Q. Five to be exact?</p> <p>13 A. Five.</p> <p>14 Q. Do you see the very next paragraph, "another 15 highly controversial topic brought up during the hearing 16 was the debate of whether or not illegal aliens or 17 illegal non-citizens were voting?" And again, that's 18 Page 37.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Were you aware of this controversy?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Were you involved in any communications regarding 23 the controversy that illegal aliens -- illegal 24 non-citizens were voting?</p> <p>25 A. Could you repeat that one more time?</p>	<p style="text-align: center;">183</p> <p>1 Q. And Hidalgo County, what time period are we 2 talking about?</p> <p>3 A. I want to say that was the 2008 time frame.</p> <p>4 Q. Let's start with Hidalgo County 2008. Is that 5 reflected in your spread sheet?</p> <p>6 A. I believe that would be on Page 3 of the election 7 code referrals office of Attorney General 2002 to 8 present. And I believe it would be Hidalgo County 9 2008 municipal election, unlawfully rejecting voters, 10 illegal voting and unlawfully accepting voters.</p> <p>11 Q. What are the facts of that case?</p> <p>12 A. That was the City of Progresso municipal 13 election. And our office assisted a portion of the 14 investigation that was conducted by the local district 15 attorney's office.</p> <p>16 Q. What did the facts show?</p> <p>17 A. I believe there was a Mexican national who voted 18 in that election.</p> <p>19 Q. And who was that, based on your spread sheet?</p> <p>20 A. It's not one of our prosecutions. We just 21 assisted in the investigation. It's not reflected in 22 our spread sheet.</p> <p>23 Q. And what was the end result of -- first of all, 24 was that referred to your office?</p> <p>25 A. It was referred to our office. However, the</p>
<p style="text-align: center;">182</p> <p>1 Q. Were you involved in any communications regarding 2 the controversy as to whether or not illegal aliens or 3 legal non-citizens were voting?</p> <p>4 MR. SWEETEN: Objection; foundation.</p> <p>5 Objection; scope. Go ahead. You can answer.</p> <p>6 A. I guess you would have to ask me communications 7 with who.</p> <p>8 Q. (By Mr. Gear) Well, and that's why I 9 intentionally stated it broadly. To find out if you 10 were first involved in any communications regarding this 11 topic. And then if it will help, I will narrow that 12 down.</p> <p>13 A. Our investigations have revealed non-citizens and 14 illegal aliens casting ballots in elections.</p> <p>15 Q. Okay. And so based on your referrals, can you 16 tell me, out of the 320, how many dealt with 17 non-citizens voting or illegal non-citizens voting?</p> <p>18 A. I do know that -- I do know that in the Dallas 19 2010 election that was referred to our office from the 20 Secretary of State, there was a non-citizen who voted in 21 that election. I do know that in the Debra Briseno 22 case, which is a prosecution, that there were 23 non-citizens who voted in that election. I am also 24 aware that in the Hidalgo County elections that there 25 were non-citizens who voted in those elections as well.</p>	<p style="text-align: center;">184</p> <p>1 district attorney's office was prosecuting it already.</p> <p>2 Q. Did you work in conjunction with the district 3 attorney's office on that investigation?</p> <p>4 A. Yes, sir. We helped out on the mail-in ballot 5 portion of that case because many of the mail-in ballots 6 were outside Hidalgo County. We assisted them in 7 interviewing voters and checking addresses in other 8 parts of Texas.</p> <p>9 Q. So again, and I'm sorry. I'm trying to 10 understand what the facts are of this case. So did this 11 case deal with a mail-in ballot system, if you know?</p> <p>12 A. That I don't know. The ADA, I believe, told me 13 that a non-citizen had voted in the election. I don't 14 think she clarified whether it was in person voting or 15 mail-in ballot fraud.</p> <p>16 Q. And that was the allegation. Was there a 17 conviction in this case?</p> <p>18 A. I don't know.</p> <p>19 Q. Were these cases dismissed?</p> <p>20 A. I don't know.</p> <p>21 Q. So as you sit here today, you don't know if -- do 22 you know if those went into prosecution?</p> <p>23 A. Yes, sir. I believe that -- I don't know for 24 sure.</p> <p>25 Q. And as you sit here today, you don't know the</p>



<p style="text-align: center;">185</p> <p>1 extent of the facts involving those cases, correct? 2 A. No, sir. I only know a portion of the case. 3 Q. And they would not be reflected in your spread 4 sheet? 5 A. No, sir. 6 Q. All right. Let's see. The other case that you 7 mentioned was Dallas County in 2010? 8 A. Yes, sir. 9 Q. Was that referred to the OAG's office? 10 A. Yes, sir it was. 11 Q. And can you show me on the spread sheet where 12 that is? 13 A. That would be on Page 4 of the election code 14 referrals of the office of the Attorney General 2002 to 15 the present. It would be, I believe was sixth case 16 down. And it says, "Dallas 2010 primary elections. 17 Unlawfully obstructing watcher. Illegal voting, 18 unlawful assistance, failure to witness application, 19 unlawfully witnessing more than one application. 20 Providing false information on application, possession 21 of mail-in ballots. Unlawful assistance in bribery." 22 And the referral date was 4/20/2010. 23 Q. So I see it here. I don't see any names 24 indicated on Page 4, as you're testifying to. Would it 25 be in any other portion of your spread sheet?</p>	<p style="text-align: center;">187</p> <p>1 charges pending spread sheet. 2 Q. Okay. So you seem to have in mind one 3 individual? 4 A. Yes, sir. 5 Q. And you mentioned mens rea, which is, did not 6 have the intent, essentially? 7 A. Correct. 8 Q. Okay. Can you tell me what the facts -- the 9 overall facts are of the case that you're talking about? 10 A. Yes, sir. She was approached by someone who was 11 canvassing her neighborhood. And she wasn't certain 12 about when the time frame was, but that person assisted 13 her in the completion of a mail-in ballot application -- 14 I'm sorry. Correction. Of a voter registration 15 certificate. 16 Q. Okay. 17 A. And on that voter registration certificate, 18 indicated that she had checked she was US citizen when 19 indeed she was not. So therefore, the elections office 20 processed her voter registration application and she was 21 issued a voter registration certificate. And so she had 22 voted in an election. 23 Q. And when you say that "she did not have the men 24 rea," can you tell me what you mean in the context of 25 the facts?</p>
<p style="text-align: center;">186</p> <p>1 A. No, sir. She was not prosecuted. 2 Q. So the allegation was not substantiated? 3 A. No, sir. She is a non-citizen. However, we 4 didn't think that she had the mens rea. Because someone 5 led her to believe that as a resident she could vote in 6 an election. 7 Q. So tell me what the facts are. What did you 8 find? Did you investigate the case? 9 A. I didn't personally. But one of my investigators 10 did. 11 Q. And who was the investigator? 12 A. Sergeant Jennifer Bloodworth. 13 Q. And can you tell me what the facts of the 14 investigation found? 15 A. Specific to that non-citizen or generally as a 16 whole? Because it's a substantial case. 17 Q. Let's talk about the substantial case. And we're 18 talking about, just so this is clear, we're talking 19 about Dallas County, the 2010 primary election, correct? 20 A. Yes, sir. 21 Q. And there was one individual that was ultimately 22 investigated? 23 A. No, sir. There were multiple individuals that 24 were investigated. And those -- many of those 25 individuals are indicated in the prosecution's and</p>	<p style="text-align: center;">188</p> <p>1 A. Yes, sir. The actual person who helped her 2 register was a deputy voter registrar who was sworn by 3 the county to help her -- to help voters fill out their 4 registration cards. 5 Q. Okay. 6 A. And the deputy voter registrar checked that she 7 was a US citizen and told her that she could vote. And 8 so she believed she actually could vote in an election. 9 Q. Do you know the name of the deputy registrar? 10 A. No, sir, I do not. 11 Q. And now, you seem to suggest that there were 12 other individuals involved in this? 13 A. Yes, sir. This case was one of the largest cases 14 that we have investigated over the years. It had 15 multiple allegations. And we charged multiple 16 defendants, Delores McMillian was part of this referral. 17 Q. Okay. And you've testified to Ms. McMillian? 18 A. Correct. Another defendant in the spread sheet 19 who was identified during that investigation was Sylvia 20 Medrano, whose case is currently pending? 21 Q. And that would be on page -- the first page of 22 the exhibit? 23 A. Yes, sir. 24 Q. And Sylvia Medrano was charged with what? 25 A. Seven counts of illegal voting, ineligible voter.</p>



<p style="text-align: center;">189</p> <p>1 Q. And would this be by absentee ballot? 2 A. I don't know for sure. 3 Q. Well, tell me what you know about the facts for 4 Sylvia Medrano. 5 A. This case involves a very contentious justice of 6 the peace election in the Dallas County area. I think 7 the election was decided by a little more than 100 8 votes. And a long serving justice of the peace was -- 9 lost the election to a challenger. The investigation 10 revealed that many people who were family members and 11 friends of the challenger had just changed their voter 12 registration to addresses within the precinct for the 13 purposes of registering to vote in just that election 14 and to cast ballots. 15 Q. But as you sit here today, you don't know if it 16 was ballots by mail or ballots cast in person? 17 A. I don't know specifically which voters cast in 18 person. I do remember that a number of the family 19 members went together to the polling place on the same 20 day and voted in that precinct. 21 Q. And again, looking at the spread sheet, the 22 charges are unlawfully obstructing a watcher, what does 23 that mean? 24 A. A poll watcher is allowed to witness the 25 activity. And I think each candidate who's running for</p>	<p style="text-align: center;">191</p> <p>1 A. Against -- in that election. And then what we do 2 is we actually show that the actual charge -- I guess 3 maybe I'm not making myself clear. 4 Q. Well, if I understood you correctly, you're 5 telling me that there may be multiple defendants -- and 6 we'll stay with Sylvia Medrano for a second. There may 7 be multiple defendants in the allegations. Are all of 8 the potential charges against all of the defendants? 9 A. No, sir. 10 Q. Okay. Then I didn't understand you. 11 A. If I can kind of explain the mechanics of how I 12 do it. You know, I do have three books in the Excel 13 spread sheet. And as somebody is charged, I cut and 14 paste all of the allegations contained in the referral 15 into the charging book so that it shows the county and 16 all of the allegations that were in that election. And 17 then the election itself and then the cause number of a 18 charging instrument. And then the actual charge. 19 Q. So ultimately she was charged with four counts of 20 illegal voting. Sorry. Looking at the wrong one. She 21 was charged with seven counts of illegal voting? 22 A. Yes, sir. 23 Q. And you're not -- as you testify today, you're 24 not saying that she voted seven times in a polling 25 place?</p>
<p style="text-align: center;">190</p> <p>1 office in Texas can designate a poll watcher. And it is 2 a criminal offense in the State of Texas for an 3 elections official to obstruct the poll watcher from 4 generally observing what kind of conduct is occur. 5 Q. Sylvia Medrano was an election official? 6 A. No, sir, I don't believe so. 7 Q. Was she a candidate? 8 A. I don't believe she was a candidate in that 9 election. 10 Q. But she's charged with unlawfully obstructing a 11 watcher? 12 A. No, sir. I think you're looking at the 13 allegation portion and not the actual charge. 14 Q. Sure. But as I understood your testimony, 15 unlawfully obstructing a watcher is generally a charge 16 or allegation that's levied against an election 17 official? 18 A. Yes, sir. If I would clarify. 19 Q. Please. 20 A. When -- the design of the spread sheet is that we 21 take all of the allegations that are contained in the 22 referral for that specific election. So the spread 23 sheet shows all of the allegations that were lodged in 24 that case or in that referral. 25 Q. Against the individual?</p>	<p style="text-align: center;">192</p> <p>1 A. I don't know how many times that she voted in a 2 polling place. 3 Q. Is it fair to say that this charge is addressing 4 the issue of by mail ballots? 5 A. I don't know if it was a poll place violation, in 6 person voting or mail-in ballots. 7 Q. You don't know. 8 A. Not off the top of my head, no, sir? 9 Q. I believe you also said Ms. Briseno? 10 A. Yes, sir. 11 Q. Can you tell me what the facts of that were? 12 A. This case was referred to our office by the 13 district attorney of, I believe it was Lavaca County. 14 Q. Port Lavaca? 15 A. Port Lavaca. And he requested investigative 16 assistance from our office in determining allegations of 17 illegal voting and misconduct in the election. It was a 18 very heated contested election. And I think three 19 candidates emerged with a very close margin in that 20 election. I think there were about 19 votes that 21 separated the three candidates. And I think Debra 22 Briseno was the winning candidate. 23 Q. Can you tell me what the facts of the case are? 24 A. Debra Briseno signed up as a deputy voter 25 registrar. So she assisted in the voter registration of</p>



<p>193</p> <p>1 citizens in the county. She additionally registered 2 non-citizens to vote during that election and informed 3 them that they could indeed vote in that election 4 despite the fact that they were not citizens in the US. 5 Q. And Ms. Briseno was the only one charged in that 6 case? 7 A. That's correct. 8 Q. And was there a determination as to why not to 9 charge the non-citizens who had registered? 10 A. Again, you have a person who is sworn as a deputy 11 voter registrar by the elections department who the 12 voters -- the non-citizens perceived to be as a 13 representative of the government. At the time, she was 14 actually a city council person for the City of Port 15 Lavaca. So these voters believed that what they were 16 telling -- what she was telling them, that they could 17 vote in the election, they took at face value. 18 Q. And again, in this case there would have been no 19 mens rea? 20 A. I believe that is why they were not charged in 21 this case. 22 Q. Okay and so I believe we've gone through the 23 cases where non-citizens were alleged to have voted, 24 Dallas 2010, Ms. Briseno and Hidalgo County. Were there 25 any others that you're aware of on these spread sheets?</p>	<p>195</p> <p>1 MR. SWEETEN: Can you read the question 2 back? 3 BY MR. GEAR: 4 Q. And I can try to pose it again. It was kind of a 5 long, run-on question. Would you agree that based on 6 your experience in the -- as an investigator and 7 supervisor in the SIU, would you agree that the chance 8 of an illegal alien actually voting in an election in 9 the State of Texas, are very slim? 10 MR. SWEETEN: Objection; calls for 11 speculation. You can answer. 12 A. I don't believe it's very slim. It all depends 13 on the motivation to do so. Through my investigations 14 over the years that I have worked with the Texas 15 Attorney General's office, it has come to our attention 16 that in some elections officials have told us, people 17 working in the voter registration departments, that 18 non-citizens have gotten voter identification cards to 19 try to develop -- to try to validate -- to validate 20 themselves inside Texas or the United States. That it 21 is one of the precursor documents that they can obtain 22 to try to obtain other things like a Texas driver's 23 license, so they can remain here illegally. 24 So it really depends on the motivation. If the 25 motivation to obtain a voter registration certificate is</p>
<p>194</p> <p>1 A. I remember a case in Culberson County where 2 allegations were made, but they were unsubstantiated. 3 Q. Did that result in an investigation? 4 A. Yes it did. 5 Q. Did it result in any charges? 6 A. No, sir, it did not. 7 Q. So other than the -- the three distinct cases, 8 Dallas County, Ms. Briseno and Hidalgo, are you aware of 9 any others? 10 A. No, sir. Not that resulted in criminal charges. 11 Q. So out of the 320 referrals that came into your 12 office, are you aware of any others that alleged 13 non-citizens voting? 14 A. Not of the cases that were referred to our 15 office. 16 Q. Referring back to the 2008 report, page -- Page 17 37, paragraph 3, after prosecution rates and fraud in 18 Texas, it says, "through talking with our county 19 election officials and other experts the committee found 20 the chance of a legal alien -- of an illegal alien 21 actually voting are very slim." Based on your 22 experience as an investigator who's been in the OAG's 23 office for -- since prior to 2005 and been with the SIU 24 the entire time of its creation, would you agree with 25 this statement?</p>	<p>196</p> <p>1 simply to try to get documents, then I would say it is 2 not very likely. But our investigations have also 3 revealed in certain areas of the state, that voters are 4 paid to vote. And they might be persuaded to vote in an 5 election. 6 Q. (By Mr. Gear) Okay. And so let me break that 7 down a little bit, because my question was voting. Is 8 the chance slim? So I understand your testimony that 9 there may be other motivations for them to obtain a 10 voter registration card. But in your experience in the 11 SIU and based on the referrals that you've seen, is the 12 occurrence of an illegal alien or illegal non-citizen, 13 is that type of referral rare to your office? 14 A. When I look at the 320 referrals that we have, 15 the allegations of a non-citizens voting in an election, 16 the number is small. 17 Q. And "small," meaning three distinct cases that 18 you've identified here on the record? 19 A. Yes, sir. I can think of three to come to mind. 20 (Exhibit No. 593 was marked.) 21 BY MR. GEAR: 22 Q. Let me know when you've had a chance to review 23 the document. 24 A. Yes, sir. 25 Q. Can you tell me what this is?</p>



<p style="text-align: center;">197</p> <p>1 A. This appears to be an article out of the Dallas 2 Morning News. It's dated May 18, 2008, and it's titled 3 Abbott GOP Pressing For Required Photo ID. 4 Q. Do you see the paragraph that indicates, 5 "Republicans say that the mere possibility of illegal 6 voting merits changes. Particularly with the rising 7 illegal immigration population and that the photo ID 8 requirement is not onerous." Do you see that? 9 A. I'm sorry. Okay. Yes, sir, I see that. 10 Q. As a supervisor in the SIU, were you aware of any 11 debate regarding the rise of -- rising illegal immigrant 12 population in reference to photo ID? 13 A. You mean globally as a -- 14 Q. State of Texas. 15 A. As a citizen of the State of Texas or... 16 Q. Yes. Well, no. As your -- as the supervisor in 17 the SIU, were you aware of this debate? 18 MR. SWEETEN: Assumes facts not in evidence. 19 Objection. 20 A. I'm aware of the debate as a whole of this issue. 21 But not in the special investigations unit. 22 Q. (By Mr. Gear) Were you involved in any 23 communications with either the Attorney General or the 24 Secretary of State's office that -- where the topic of 25 rising illegal immigrant population was the topic of</p>	<p style="text-align: center;">199</p> <p>1 A. I would believe it came from -- internally within 2 the law enforcement division. 3 Q. Internally from which division? 4 A. Well, the special -- I would say that it came 5 from either my division chief or my, at the time, who 6 would have been Major Boatright or the Deputy Attorney 7 General for criminal justice Eric Nichols. 8 Q. Do you know what the reason for that request was? 9 A. No, sir. 10 Q. And did you respond to that request? 11 A. I would presume so, yes. 12 (Exhibit No. 593 was marked.) BY MR. GEAR: 14 Q. I'm showing you what's been marked as Exhibit 593 15 and give you a chance to look at that. Have you had a 16 chance to review the document? 17 A. I'm almost done. Sorry. 18 Q. Take your time. 19 A. Okay, sir. 20 Q. Can you tell me what this is? 21 A. This document appears to be a clipping of the 22 Dallas Morning News, dated May 18, 2008. And it is 23 titled AG Fails to Uncover Major Voting Fraud. 24 Q. Have you seen this newspaper article before? 25 A. Not to my memory.</p>
<p style="text-align: center;">198</p> <p>1 discussion? 2 A. No, sir. 3 Q. During the consideration of the referrals or 4 investigations, were you ever asked to give special 5 attention or focus on illegal aliens or non-citizens 6 voting? 7 A. No, sir. I was never asked to give any special 8 consideration to that. At some point in time, I had 9 been asked, "Hey, are there any cases on your spread 10 sheet?" And in those circumstances I identified the 11 ones on the spread sheet, as I have done today. 12 Q. Who made this request? 13 A. I don't remember. 14 Q. Well, let's see if we can flesh this out. When 15 were you asked to identify these types of cases on your 16 spread sheet? 17 A. I don't remember. 18 Q. Was it during the 2011 legislative session? 19 A. I couldn't say for certain. 20 Q. Was it by a legislator? 21 A. Oh, no, sir. 22 Q. Was it by someone in the Secretary of State's 23 office? 24 A. I don't believe so, no. 25 Q. Do you recall which office the request came from?</p>	<p style="text-align: center;">200</p> <p>1 Q. Focusing on the article itself, by May 18, 2008 2 it indicates that, "Mr. Abbott has prosecuted 26 cases." 3 Would that be accurate based on your spread sheet? 4 A. I think about that time that would be pretty 5 close. 6 Q. Okay. Is it also accurate to say that in 18 of 7 the 26 cases the voters were eligible voters with -- the 8 votes were properly cast and no vote was changed, 18 of 9 the 26? 10 A. I do know that no vote was changed, but I don't 11 know that it was properly cast. 12 Q. It also goes on to say, "but people who collected 13 the ballots for mail-in were prosecuted." Would that be 14 fair to say? 15 A. Yes, sir. If I could clarify. 16 Q. Please. 17 A. If someone assists in the completion of a mail-in 18 ballot, someone assists the voter, fails to sign as 19 assisting the voter and -- or possesses the ballot, they 20 would be prosecuted for the position of the ballot or 21 carrier of envelope of another. Many of these cases 22 also involve unlawful assistance. And if a voter was 23 unlawfully assisted in the completion of a mail-in 24 ballot or any other type of ballot, under State law that 25 ballot would be stricken.</p>



<p style="text-align: center;">201</p> <p>1 Q. Okay. And it says, in 593, that "the State law 2 makes it a crime to carrier someone else's filled out 3 ballot to the ballot box." Is that fair?</p> <p>4 A. It is a crime unless they identify themselves on 5 the carrier envelope.</p> <p>6 Q. Unless the carrier puts his or her own name on 7 the -- and address on the envelope?</p> <p>8 A. Yes, sir. I believe there are also defenses to 9 prosecution to that.</p> <p>10 Q. In the middle column of Exhibit 593, I think it's 11 the third paragraph in the bottom, "when an attorney 12 general makes certain cases a priority, you can dispatch 13 investigators, assign teams of State lawyers and direct 14 millions of dollars from federal grants and the agency 15 budget, such assistance helps bolster action in counties 16 especially where local prosecutor's lack the resources." 17 Is that a fair statement? And let me -- why don't you 18 strike that. Is it accurate that when an attorney 19 general, in this case Attorney General Abbott, makes 20 voter fraud a priority, he can do the types of things 21 described here?</p> <p>22 MR. SWEETEN: Assumes facts not in evidence. 23 Calls for speculation. Objection.</p> <p>24 BY MR. GEAR:</p> <p>25 Q. Well, let me see if I can come at that a little</p>	<p style="text-align: center;">203</p> <p>1 just the criminal investigations division, got a \$1.4 2 million grant. And of that grant, a portion of 3 investigators were hired and the special investigations 4 unit, the money laundering unit, the cyber crimes unit 5 and the fugitive apprehension unit.</p> <p>6 Q. Previously you testified to a case regarding 7 Hidalgo County. If you look at paragraph 3, second 8 paragraph I believe, from the top, it says, "in another 9 case, three Hidalgo County women were indicted on 10 charges. They illegal assisted elderly voters and 11 mishandled the mail-in ballots in 2005, McAllen mayor's 12 race." Was that the Hidalgo case that you were 13 referencing that was handled by a different agency?</p> <p>14 A. No. This is actually a different case.</p> <p>15 Q. It is a different case?</p> <p>16 A. Yes, sir. And I think in that case there were --</p> <p>17 MR. SWEETEN: Just answer his question.</p> <p>18 A. I'm sorry.</p> <p>19 Q. (By Mr. Gear) And the answer was this is a 20 different case?</p> <p>21 A. This is a different case.</p> <p>22 Q. And in this case in 2005, the judge dismissed the 23 allegations. Is that accurate?</p> <p>24 A. Yes, sir, I believe so.</p> <p>25 Q. And is this particular case referenced in your</p>
<p style="text-align: center;">202</p> <p>1 bit differently then. Is it accurate to say that 2 Attorney Abbott dispatched investigators throughout the 3 state to root out and prosecute voter fraud cases?</p> <p>4 A. No, I wouldn't say that's an accurate statement.</p> <p>5 Q. What would you say is an accurate statement?</p> <p>6 A. I would say that our office receives referrals 7 from third parties, such as the Secretary of State or 8 the DA's offices or local law enforcement, asking us to 9 help them in the investigation of election code 10 violations. And that we have a group of investigators 11 who perform their duty in that regard.</p> <p>12 Q. Does he have an authority to assign teams of 13 State lawyers?</p> <p>14 MR. SWEETEN: Objection; calls for 15 speculation. You can answer.</p> <p>16 A. I don't think the Attorney General would direct 17 the assignment of prosecutor's to cases. I think that 18 we have a number of prosecutor's within our office who 19 handle a wide variety of cases, some which include 20 election cases.</p> <p>21 Q. (By Mr. Gear) Is it accurate in this article 22 that there was a \$1.4 million federal crime fighting 23 grant?</p> <p>24 A. As I think I previously discussed in my 25 testimony, I think the criminal investigations division,</p>	<p style="text-align: center;">204</p> <p>1 spread sheet?</p> <p>2 A. Yes, sir. It's referenced in the referrals.</p> <p>3 Q. I think I'm almost done. Let me kind of go 4 through my notes here?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Are you aware of any testimony during the 2011 7 legislative session where SB 14 was discussed where your 8 spread sheet was the topic of discussion?</p> <p>9 A. I believe I was present when Deputy Director 10 David Maxwell testified, but I don't recall which 11 session -- which House.</p> <p>12 Q. And he testified in 2011?</p> <p>13 A. Yes, sir, I believe so.</p> <p>14 (Exhibit No. 594 was marked.)</p> <p>15 BY MR. GEAR:</p> <p>16 Q. I'm going to show you what's been marked as 17 Exhibit 594 and give you a chance to look at that. You 18 indicated that David Maxwell provided testimony. And 19 the question is, is that what you were referring to?</p> <p>20 A. Yes, sir, I believe so.</p> <p>21 Q. Do you see any reference to a spread sheet in his 22 testimony, more specifically, to your spread sheet?</p> <p>23 A. I don't see anything that says my spread sheet.</p> <p>24 Q. Okay. Does anything he testified to in 2011 25 change any of the answers that you gave here today?</p>



<p style="text-align: center;">205</p> <p>1 A. No, sir, I don't believe so. 2 MR. SWEETEN: I'm going to object to the 3 question as compound. But he's answered it. 4 (Exhibit No. 595 was marked.) 5 BY MR. GEAR: 6 Q. Did you still want the take some time to review 7 that? 8 A. I don't believe Mr. Maxwell's testimony will 9 change my testimony. 10 Q. Okay. Take some time to review that exhibit and 11 then we can talk about it. 12 A. This one right here, sir? 13 Q. Yes. And specifically, just so we can move this 14 forward a little bit, I think it's Page 7, do you see 15 your name indicated? 16 A. Yes, sir, I do. 17 Q. Have you seen this document before? 18 A. No, sir. 19 Q. And for the record, this is the plaintiffs 20 supplemental initial disclosures pursuant to federal 21 rules of civil procedure 26 A. Were you involved in any 22 aspect of preparing this particular document? 23 A. No, sir. 24 Q. All right. And I ask you, did you see your name 25 indicated in it under, I believe No. 12, it indicates</p>	<p style="text-align: center;">207</p> <p>1 A. No. I'm only aware of the ones that were 2 referred to our office. 3 Q. Other than what you testified to here today, are 4 you aware of any other cases where the allegation was 5 illegal aliens or illegal non-citizens voting? 6 A. No, sir. 7 Q. Other than what you testified to here today, are 8 you aware of any other investigations regarding voter 9 impersonation? 10 A. Could you repeat that one more time? 11 Q. Other than what you testified to here today, are 12 you aware of any other investigations involving voter 13 impersonation in the State of Texas? 14 A. I am aware of one. 15 Q. And what would that be? 16 A. I read an article about a case that's ongoing now 17 in Tarrant County where the -- a son used his father's 18 voter registration card to cast a ballot in an election. 19 But I just read that in the open source newspaper. 20 Q. So you gained that knowledge from the newspaper? 21 A. Uh-huh. 22 Q. Has any allegation been referred to the OAG's 23 office? 24 A. No, sir. That's being conducted by the Tarrant 25 County district attorney's office.</p>
<p style="text-align: center;">206</p> <p>1 Captain Forrest Mitchell. That's actually Major 2 Mitchell at this point, correct? 3 A. Yes, sir. 4 Q. All right. And it says, "Captain Mitchell is a 5 member of the special investigations unit of the law 6 enforcement division of the office of the Texas Attorney 7 General," which is accurate, correct? 8 A. Yes, sir. 9 Q. "Captain Mitchell or Major Mitchell, has 10 knowledge regarding election fraud in the State of 11 Texas." Other than the testimony that you provided 12 today, is there any additional knowledge that may be 13 relevant to voter fraud in the State of Texas? 14 MR. SWEETEN: Counsel, I'm going to the 15 object to the question as vague. We've provided a 16 description of his areas of testimony. Obviously you've 17 had the opportunity to, now for six hours, to question 18 him on that. We intend to ask him questions, and in 19 relation to the substance of the matters here. So I 20 think the question is -- I think it's unfair. 21 MR. GEAR: I withdraw the question. 22 BY MR. GEAR: 23 Q. Other than what you've testified to here today, 24 are you aware of any other cases of voter impersonation 25 in the State of Texas?</p>	<p style="text-align: center;">208</p> <p>1 Q. Has there been any communication with the Tarrant 2 County district attorney's office regarding that 3 allegation? 4 A. No, I haven't talked to them at all. 5 Q. Do you know the name of the alleged? 6 A. No, sir, I'm sorry. 7 Q. Perpetrator, for lack of a better word? 8 A. No, sir, I'm sorry. 9 Q. Do you know the election that it allegedly 10 occurred? 11 A. I want to say it was this primary election. 12 Q. 2012? 13 A. Uh-huh. 14 Q. And that occurred on? 15 A. I think it would be May 29th. 16 Q. May 29 primary election. And other than what you 17 read from the newspaper, are you aware of any other 18 facts pertaining to that? 19 A. No, sir. 20 Q. Can you investigate alleged voter fraud without a 21 referral? 22 A. The Texas election code does say that if we had 23 reason to believe that a violation occurred, that the 24 attorney general's office could investigate. 25 Q. Have you ever investigated a voter fraud case</p>



<p style="text-align: center;">209</p> <p>1 without an official referral?</p> <p>2 A. No, sir. We generally -- we request a referral</p> <p>3 before we initiate an investigation.</p> <p>4 Q. Have you requested a referral for the case which</p> <p>5 you just referenced?</p> <p>6 A. No, sir.</p> <p>7 Q. Other than what you testified today, are you</p> <p>8 aware of any prosecutions for voter impersonation in the</p> <p>9 State of Texas?</p> <p>10 A. I believe the DA has indicted that case in</p> <p>11 Tarrant County, the one I said regarded voter</p> <p>12 impersonation.</p> <p>13 Q. Is the OAG's office involved in that case in any</p> <p>14 aspect?</p> <p>15 A. No, sir.</p> <p>16 Q. I believe you testified that you have not</p> <p>17 requested a referral?</p> <p>18 A. No, sir.</p> <p>19 Q. Why not request a referral for that particular</p> <p>20 case?</p> <p>21 A. Because we have plenty of work to do on our own.</p> <p>22 Q. Fair answer. I think I am done.</p> <p>23 MR. GEAR: And I will pass the questioning</p> <p>24 to Ezra.</p> <p>25 MR. ROSENBERG: Thanks.</p>	<p style="text-align: center;">211</p> <p>1 fraud?</p> <p>2 A. As I previously testified, sir, preceding the --</p> <p>3 preceding the creation of the spread sheet, I was</p> <p>4 required to produce a WordPerfect document that talked</p> <p>5 about the types of cases that we would referred and the</p> <p>6 referral sources and the allegations contained.</p> <p>7 Q. And has that document been produced in this</p> <p>8 litigation?</p> <p>9 A. I provided it to counsel.</p> <p>10 Q. Other than that WordPerfect document, have you</p> <p>11 ever created any other report related to voter fraud?</p> <p>12 A. No, sir.</p> <p>13 Q. Have you ever done any specific analysis of in</p> <p>14 person voter fraud, other than the spread sheet and the</p> <p>15 WordPerfect document?</p> <p>16 A. One time in, I want to say 2006, I looked at the</p> <p>17 incidents of mail-in -- not mail-in ballot fraud, but</p> <p>18 the proportion of mail-in ballots received by a county.</p> <p>19 Q. And what was your purpose in doing that?</p> <p>20 A. I wanted to see what the typical average is in</p> <p>21 the State of Texas for an elections office to receive --</p> <p>22 for the number of registered voters to the number of</p> <p>23 mail-in ballots cast.</p> <p>24 Q. Did you draw any conclusions in that report?</p> <p>25 A. If memory serves me correctly, I think it was,</p>
<p style="text-align: center;">210</p> <p>1 EXAMINATION</p> <p>2 BY MR. ROSENBERG:</p> <p>3 Q. And I will be very short, Major. Thanks for your</p> <p>4 time today.</p> <p>5 A. Yes, sir.</p> <p>6 Q. Just a couple of questions. You testified that</p> <p>7 statutorily required for the district attorneys to</p> <p>8 notice the Secretary of State when they are charging</p> <p>9 someone with election fraud. Is that what the</p> <p>10 requirement is?</p> <p>11 A. I believe the statutory language says if they are</p> <p>12 going to initiate an investigation of prosecution.</p> <p>13 Q. And I think you also testified then, that the</p> <p>14 Secretary of State maintains a list of those instances</p> <p>15 when it has been notified?</p> <p>16 A. I don't remember that.</p> <p>17 Q. Have you ever seen a list that's maintained by</p> <p>18 the Secretary of State of investigations that were</p> <p>19 initiated by the district attorney?</p> <p>20 A. No, I've never seen such a list.</p> <p>21 Q. Do you know if any such list has been produced in</p> <p>22 this litigation?</p> <p>23 A. No, sir, I do not.</p> <p>24 Q. Other than the spread sheet that you maintained,</p> <p>25 have you ever created any reports related to voter</p>	<p style="text-align: center;">212</p> <p>1 the average county might receive two to three percent of</p> <p>2 their registered voters for mail-in applications.</p> <p>3 Q. Did you break down that percentage by any</p> <p>4 demographics?</p> <p>5 A. No.</p> <p>6 Q. Other than that report and the spread sheet and</p> <p>7 the WordPerfect document, have you done any specific</p> <p>8 analysis of in person voter fraud?</p> <p>9 A. No, sir.</p> <p>10 Q. Have you ever been asked to do any specific</p> <p>11 analysis of in person voter fraud?</p> <p>12 A. No, sir.</p> <p>13 Q. To your knowledge, has anyone in your office ever</p> <p>14 been asked to do any specific analysis of in person</p> <p>15 voter fraud?</p> <p>16 A. No, sir.</p> <p>17 Q. To your knowledge, has anyone in your office ever</p> <p>18 been asked to do an analysis of how various forms of</p> <p>19 voter identification would affect the level of voter</p> <p>20 fraud?</p> <p>21 A. No, sir.</p> <p>22 Q. I would like to talk, very briefly about the four</p> <p>23 instances of voters who tried to impersonate -- who are</p> <p>24 alleged to have tried to impersonate others. And by</p> <p>25 that -- I said four. You can correct me if I'm wrong.</p>



<p style="text-align: center;">213</p> <p>1 As I understand it, it is only four instances of persons 2 trying to impersonate others. The fifth person was 3 charged with trying to help one of these four people 4 impersonate someone else. Is that correct? 5 A. That's correct. 6 Q. So it is four instances where a person tried to 7 impersonate someone else. One of those instances was 8 McMillian. And as I understand that, that was an 9 election official; is that correct, McMillian? 10 A. Yes, sir. Delores McMillian was an elections 11 worker in Dallas County. 12 Q. And somehow, prior to the polls opening, she had 13 somehow signed herself up as someone else? 14 A. Yes, sir, that's my understanding. 15 Q. So that wasn't a situation where 16 Delores McMillian walked into the polling place and 17 pretended, to the election official, that she was 18 someone else; is that correct? She was basically 19 cooking the books because she was the election official 20 herself, right? 21 A. My understanding is that she marked that voter on 22 the ballot before the polls were even opened. 23 Q. Without having to interact with any other 24 election official, right? 25 A. I believe that she was interacting with her</p>	<p style="text-align: center;">215</p> <p>1 A. It depends on whether she used her voter 2 registration certificate to come to the polling place to 3 cast her ballot, or whether she used her Texas driver's 4 license. That suspect had obtained four different voter 5 registrations that were mailed to her residence. 6 Q. (By Mr. Rosenberg) Right. But for terms of the 7 photo ID that she had, there was three different photos 8 of her, but under three different names; is that 9 correct? 10 A. Yes. She had three different IDs in different 11 names. 12 Q. Are you aware of anyone more knowledgeable than 13 yourself in the SUI or the OAG who has knowledge of 14 voter fraud? 15 A. No, sir. 16 Q. I didn't think so. 17 MR. ROSENBERG: And I think I don't have any 18 further questions. 19 MR. SWEETEN: I'm probably going to have a 20 short redirect. So I'm going to speak with counsel 21 about it so let's take about a 5-minute break. 22 (Brief recess.) 23 EXAMINATION 24 BY MR. SWEETEN: 25 Q. Major Mitchell, you have been asked a number of</p>
<p style="text-align: center;">214</p> <p>1 mother who was doing the same thing. 2 Q. So it's not a situation where she presented an 3 identification to someone and said I'm someone else. 4 She just manufactured this along with her mother because 5 she was the election official, correct? 6 A. That's my understanding, yes, sir. 7 Q. Now, you also talk about a Mary Comparin. And 8 did you say that that was a situation where 9 Ms. Comparin, and I know this is -- I've only, 10 Mr. Sweeten, because it's a company situation. But 11 she's alleged to have gotten, I think you used the term 12 "various images of driver's licenses, et cetera?" 13 A. It's my understanding that Mary Comparin had 14 obtained three or four Texas driver's licenses in 15 different names. 16 Q. With her photo on them? 17 A. Yes, sir. 18 Q. So if she were to produce those driver's licenses 19 at the polling place, the photo would match her face, 20 correct? 21 A. Yes, sir. 22 Q. So SB 14 would not really help that situation; is 23 that correct? 24 MR. SWEETEN: Objection; calls for legal 25 conclusions, speculation. But you can answer.</p>	<p style="text-align: center;">216</p> <p>1 questions today about voter fraud. And I want to ask 2 you a few questions based upon your experience as an 3 investigator. What types of cases do you work on in 4 addition to voter fraud? 5 MR. GEAR: I just object; asked and 6 answered. But go ahead. 7 A. Currently, I don't do any investigations myself. 8 I'm just a supervisor investigator at this point in 9 time. But historically, I have worked capital murder 10 investigations, public integrity investigations, money 11 laundering investigations, fraud investigations. 12 Citizen investigation, administrative investigations. 13 And a wide variety of criminal offense. 14 Q. (By Mr. Sweeten) How long have you worked 15 specifically on the issue of investigating voter fraud 16 as part of the many things you do? 17 A. I would say since 2005. 18 Q. Now, with respect to the issue of in person voter 19 fraud, can you tell us how difficult is in person voter 20 fraud to detect as a general matter? 21 A. It is incredibly difficult to detect. 22 Q. Why is that? 23 A. Because the only way that -- it's my experience 24 that the only way that you would detect in person voter 25 fraud is if someone inside the polling place personally</p>



<p>217</p> <p>1 knows the person who's presenting the fraudulent voter 2 registration certificate. And additionally, there is an 3 absence of a positive identification in that regard, in 4 that it's difficult, many times when we get these cases 5 referred to us, that they are coming months after the 6 fact. And many cases, it could be there's already 7 another election that has taken place. 8 And when I interview witnesses or any one of my 9 investigators interview witnesses it's very difficult 10 for voters to identify a potential suspect, if there was 11 one, through conventional photo line-ups or that regard. 12 So it is very hard to detect unless someone in the 13 actual polling place knows that person personally. 14 Q. Okay. How difficult is in person voting fraud to 15 detect as compared to other types of crimes, such as 16 white-color crime that you investigate? 17 MR. ROSENBERG: I'm going to object to form. 18 MR. GEAR: I would object; calls for 19 speculation. 20 BY MR. SWEETEN: 21 Q. Just based upon your experience as an officer, 22 can you compare as far as detecting in person voter 23 fraud, how it compares to other types of crimes that you 24 investigate? 25 MR. SWEETEN: I will also object to</p>	<p>219</p> <p>1 Q. What about the Harris County attorney, same set 2 of questions. Are you given the -- do you have access 3 to data regarding how much in person voter fraud they 4 prosecute in a given year? 5 A. No, sir. 6 Q. Are you necessarily made aware of any in person 7 voter fraud case that's occurring by the Harris County 8 attorney? 9 A. No, sir. 10 Q. What about Bexar County? What about the Bexar 11 County district attorney. Are you made aware 12 specifically of instances of in person voter fraud or 13 prosecutions? 14 MR. GEAR: Are you saying bare or bared. 15 MR. SWEETEN: Its' B-E-X-A-R, Bexar. It's 16 San Antonio. 17 A. No, sir. 18 Q. (By Mr. Sweeten) Okay. With -- if the -- if a 19 county attorney prosecutes a case of voter fraud, are 20 you made aware of that? 21 A. No, sir. 22 Q. How about Dallas County, same question, are you 23 made aware when the Dallas County district attorney is 24 prosecuting a case of in person voter fraud? 25 A. No, sir.</p>
<p>218</p> <p>1 relevance. 2 MR. ROSENBERG: And compound. Go ahead. 3 A. I believe that in person voter fraud is very 4 difficult to detect in comparison to other cases because 5 in other cases I have, in many cases, forensic evidence 6 that I can rely upon to detect a potential suspect that 7 do not exist in in person voter fraud. 8 Q. (By Mr. Sweeten) Okay. Now, when we talked -- 9 we talked about, I think to a large degree, about the 10 sources of referrals that the office of attorney general 11 received. You talked about referrals from the Secretary 12 of State from local election officials and from local 13 law enforcements. Let me ask you, when the district 14 attorney's office is prosecuting an election fraud case, 15 do you -- are you aware of that? Are you made aware of 16 that? 17 A. Not necessarily. 18 Q. Okay. And in the three most popular counties in 19 the State of Texas would Harris County. When the Harris 20 County DA prosecutes a voter fraud case, is that 21 something you're made aware of? 22 A. No, sir. 23 Q. Do you have any access to statistics about how 24 often voter fraud is prosecuted by that agency? 25 A. No, sir.</p>	<p>220</p> <p>1 Q. Do you have access to statistics related to that? 2 A. No, sir. 3 Q. What about if a county attorney is prosecuting a 4 case, do you have access to that information? 5 A. No, sir. 6 Q. Data regarding that? 7 A. No, sir. 8 Q. What about as to any other county in the State of 9 Texas, do you get automatically -- are you given data 10 regarding those prosecutions? 11 A. No, sir. 12 Q. Now, we've talked about other prosecutorial 13 entities within the State of Texas that prosecute. Are 14 there other law enforcement agencies that prosecute in 15 person voter fraud? 16 A. I believe there could be more. 17 Q. Okay. Does the federal -- does federal law 18 enforcement refer or do they investigate allegations of 19 voter fraud? 20 A. I believe the FBI and the Department of Justice 21 could investigate allegations of in person voter fraud 22 if it was a national election. 23 Q. From 2002 through 2011, did any federal law 24 enforcement agency refer any cases to your office? 25 A. Would you repeat that one more time?</p>



<p style="text-align: center;">221</p> <p>1 Q. From 2002 through 2011, did any federal law 2 enforcement agency refer any voter fraud cases to your 3 office? 4 A. No, sir, not voter fraud. 5 Q. Does your spread sheet include any cases 6 investigated by federal law enforcement officials? 7 A. No, sir. 8 Q. Does your spread sheet include any entries 9 related to district attorneys or county attorneys that 10 have prosecuted voter fraud? 11 A. Only the ones that we cooperated with or assisted 12 them on the investigation. 13 Q. Okay. If you wanted to find out what federal law 14 enforcement agencies have prosecuted voter fraud in this 15 State, who would you ask? 16 A. I would think I would have to ask the four 17 different US districts department of justice. 18 Q. Does -- let me ask you the question. Does the 19 fact that the office of the attorney general, and you 20 testified earlier that the office of the attorney 21 general received approximately 320 referrals from 2002 22 to the present for alleged election code violations. Do 23 you recall that testimony? 24 A. Yes, sir, I do. 25 Q. Does the fact that your list contains 320</p>	<p style="text-align: center;">223</p> <p>1 A. I'm sorry. Could you restate the question? 2 Q. (By Mr. Sweeten) Yeah. Does the fact that the 3 office of the attorney general received 3 -- I think you 4 testified, received more mail-in ballot fraud 5 allegations and referrals than in person mail-in 6 referrals, does that make it a less serious crime under 7 the Texas statutes of the penal code? 8 MR. ROSENBERG: Same objection; leading. 9 MR. GEAR: Also same objection. 10 A. No, sir. 11 Q. (By Mr. Sweeten) In your experience as a law 12 enforcement officer, does increasing the severity of 13 criminal penalties act as a deterrent to those intends 14 to commit a criminal act? 15 A. Yes, sir I believe so. 16 Q. Does Senate Bill 14 increase criminal penalties 17 for attempts? 18 A. Yes, sir I believe it does. 19 Q. And what about for actual voter fraud? 20 A. I think it increases the penalty. 21 Q. Between mail-in voter fraud and in person voting 22 fraud, which of those two crimes is, as an investigator 23 more difficult to investigate? 24 MR. GEAR: Objection; vague. Objection; 25 calls for speculation.</p>
<p style="text-align: center;">222</p> <p>1 entries, does that mean since 2002 there have been 320 2 voter fraud cases in Texas? 3 MR. ROSENBERG: Objection; leading. 4 BY MR. SWEETEN: 5 Q. Does it mean that? 6 MR. GEAR: Same objection. 7 MR. ROSENBERG: Same objections. 8 BY MR. SWEETEN: 9 Q. You can answer. 10 A. I do not believe that the 320 referrals listed on 11 my spread sheets are representative of the actual 12 misconduct that's occurring in the State of Texas. I 13 believe that there's many that go undetected. 14 Q. And so is it your belief that in addition to the 15 320 referrals, what is your belief as to whether there 16 are additional cases of voter fraud that go undetected? 17 A. I believe that there are cases of voter fraud 18 that go undetected and unreported. 19 Q. Okay. Let me ask you, does the fact that the 20 office of attorney general receive more referrals 21 related to mail-in voting fraud, meaning that it is any 22 less serious of -- actually that it's less serious a 23 crime than mail-in ballot fraud? 24 MR. ROSENBERG: Objection; leading. 25 MR. GEAR: Objection; leading.</p>	<p style="text-align: center;">224</p> <p>1 BY MR. SWEETEN: 2 Q. You can answer. 3 A. It has been my experience that the most difficult 4 case to investigate would be in person voter fraud. 5 Q. I'm going to read a statement to you and I'm 6 going to ask you if you agree with this. "The well 7 publicized fact that voter registration lists 8 fraudulent, deceased or otherwise invalid names 9 undermines the public confidence in the electoral 10 process that is the life blood of Democratic 11 institutions." As your experience as an investigator, 12 would you agree with this statement? 13 MR. ROSENBERG: Objection; leading. 14 MR. GEAR: Same objection. 15 BY MR. SWEETEN: 16 Q. Would you agree with this statement? 17 A. I absolutely believe so. 18 Q. "Particularly given that in person voter fraud is 19 difficult to detect without rigorous ID requirements and 20 that as a practical matter, it is important for the 21 State to deter and not just detect and punish voter 22 fraud." Do you agree that, the first part of that, that 23 in person voter fraud is difficult to detect without 24 rigorous ID requirements? 25 MR. ROSENBERG: Objection; extraordinarily</p>

225 1 leading. 2 MR. GEAR: Objection; leading. 3 A. I believe that in person voter fraud is difficult 4 to detect absent a photo ID requirement. 5 Q. (By Mr. Sweeten) Is that statement consistent or 6 inconsistent with your experience? 7 MR. ROSENBERG: Same objection. 8 MR. GEAR: Same objection. 9 A. I believe that that statement is consistent with 10 my experience. 11 MR. ROSENBERG: Why don't we take a couple 12 of minutes and we'll probably have a little redirect or 13 recross. 14 MR. GEAR: We will have a redirect. 15 (Brief recess.) 16 FURTHER EXAMINATION 17 BY MR. GEAR: 18 Q. You were asked a question by your counsel 19 regarding whether or not SB 14, the penalties in SB 14, 20 would act as a deterrent to voter fraud. Do you recall 21 those questions? 22 A. Yes, sir, I do. 23 Q. Do you believe that the current laws as they are 24 in the State of Texas act as a deterrent to voter fraud? 25 A. I believe they act as somewhat of a deterrent.	227 1 severe. 2 Q. So are you suggesting that a voter who commits 3 voter impersonation at the polls should be subject to up 4 to 99 years in prison? 5 A. I think that's a very serious offense and that 6 elections in Texas are decided, in some cases, in small 7 rural jurisdictions by a handful of votes and just one 8 vote can swing an election. 9 Q. Under the current law, non-citizens if they 10 voted, there's an enhancer penalty, correct? 11 A. I can't remember all the laws. I don't recall 12 that specific one right now. 13 Q. Are the penalties specific to non-citizens 14 voting? 15 A. I would think it would be just under 64012, which 16 would be illegal voting. 17 Q. If a non-citizen represents that they're a 18 citizen when they register to vote, is there an 19 additional penalty to that? 20 A. Yes, sir. There is an offense for providing 21 false information on the voter registration application. 22 Q. That would be perjury, correct? 23 A. Under the Texas election code it could be 24 prosecuted either way. As perjury or the false 25 statement on the voter registration application.
226 1 Q. Do you believe that the current laws are 2 sufficient to act as a deterrent to voter fraud? 3 A. It is my opinion that I believe that they're 4 insufficient in the penalty to deter voter fraud. 5 Q. And what are the current penalties as they are 6 for voter fraud in the State of Texas? 7 A. Currently an attempt is -- an attempt to commit 8 voter fraud or voter impersonation as characterized 9 would be a class A misdemeanor, which is punishable by 10 only up to a year in jail and a fine of \$4,000. 11 Q. And an actual act of voting -- voter 12 impersonation? 13 A. I believe it's only, and I believe right now it's 14 only a third degree penalty. Only two to three years in 15 the State of Texas and up to a \$10,000 fine. 16 Q. You're saying only two to 10 years. Would you 17 consider that a significant amount of time for the act 18 of voter impersonation? 19 A. And this is my opinion. We have a statute in the 20 State of Texas which says that if you tamper with an 21 electronic voting device, in other words an electronic 22 E-machine, that is a first degree felony which is punish- 23 able by up to five to 99. I think tampering with an 24 electronic voting machine or illegal voting, in my mind 25 are not dissimilar. So I think it should be more	228 1 Q. And that would be an additional penalty to the 2 other penalties you've discussed? 3 A. Yes, sir. 4 Q. And a voter, a non-citizen, who votes at a 5 polling place would also be subject to deportation if 6 they were discovered? 7 A. It's my understanding that the only way someone 8 would be deported at this time is if they were convicted 9 of a felony criminal offense. 10 Q. And what are you basing that on? 11 A. Articles I've read in the newspaper. 12 Q. So as the supervisor for the SIU, are you aware 13 of what the penalties are for an illegal alien or 14 non-citizen voting? And that would be an illegal 15 non-citizen voting. 16 A. Federally or State? 17 Q. State. 18 A. I would think it would be -- I don't know exactly 19 what the penalties are. I believe illegal voting is a 20 third degree felony. 21 Q. And you mentioned federal. There are additional 22 federal penalties for illegal aliens voting. Would that 23 be correct? 24 A. I don't know, sir. 25 Q. You were asked a question about whether or not



<p style="text-align: center;">229</p> <p>1 you knew if there were additional allegations or 2 investigations of voter fraud in Harris County, Dallas 3 County, Bexar County. Do you recall that testimony? 4 A. Yes, sir, I do. 5 Q. In fact, you received, you being the office of 6 the attorney general, has received referrals from all of 7 those counties, Harris County, Dallas and Bexar County; 8 isn't that correct? 9 A. I do not think we have received any referrals 10 from the district attorney's office in Dallas County. 11 We have received allegations -- we have received 12 referrals from the Secretary of State referencing Dallas 13 elections. 14 Q. And the initiative that you engaged in to train 15 various, I believe you said peace officers, that 16 included Harris, Dallas and Bexar County? 17 A. I don't recall the exact specific locations that 18 we trained. I do know that we enlisted the support of 19 the councils of government in geographical areas. I 20 don't remember if Dallas or Houston were specific 21 locations that we trained. I do know that we trained 22 all over Texas. 23 Q. Specifically cities that had 100,000 or more? 24 A. No, we trained in locations that were actually 25 even smaller than that. The training that I personally</p>	<p style="text-align: center;">231</p> <p>1 general's office? 2 A. I believe I mentioned the fact that I was aware 3 of one that occurred in Tarrant County as well. 4 Q. Other than Tarrant County? 5 A. No, sir. 6 Q. So your opinion that there are many and they are 7 undirected is just that, an opinion; is that correct? 8 A. Yes, sir it is an opinion based upon 9 investigation that we've conducted and witnesses we've 10 interviewed and allegations that we've reviewed. 11 Q. And based on investigations that you've 12 conducted, you would have pursued those if the facts and 13 the law warranted a charge of voter impersonation. Is 14 that fair to say? 15 MR. SWEETEN: Objection; compound. 16 A. There are many reasons why we may not pursue 17 allegations or prosecute somebody for voter 18 impersonation. We have the proof of -- we have the 19 burden of proof of beyond the reasonable doubt. 20 Q. (By Mr. Gear) Correct, because it's a criminal 21 offense. 22 A. And there are cases where we may not have felt 23 that we had proof beyond the reasonable doubt to 24 prosecute somebody. 25 Q. Are there cases that you believed you had proof</p>
<p style="text-align: center;">230</p> <p>1 conducted was in deep East Texas, Smith County and Bowie 2 County. 3 Q. Now, you've relied on your spread sheet for 4 various aspects of voter fraud in the State of Texas; 5 isn't that correct? 6 A. Yes, sir, I have. 7 Q. In fact, you relied on that to determine the 8 geographical areas of the violations were occurring in. 9 I believe that was your testimony? 10 A. Yes, sir. 11 Q. And so as you sit here today, you're aware of 320 12 referrals that came to the office of the Attorney 13 General, correct? 14 A. Yes, sir. 15 Q. And I believe I asked you during the initial part 16 of your testimony whether or not you were aware of any 17 other allegations of voter impersonation or 18 investigations of voter impersonation in the State of 19 Texas and I believe your answer was no; is that correct? 20 MR. SWEETEN: I think that misstates the 21 testimony. 22 BY MR. GEAR: 23 Q. Well, are you aware of any other investigations 24 of voter impersonation in the State of Texas, other than 25 the ones that have been investigated by the attorney</p>	<p style="text-align: center;">232</p> <p>1 beyond a reasonable doubt that you determined not to 2 prosecute? 3 A. No. I don't believe that we had proof beyond a 4 reasonable doubt that we chose not to prosecute. 5 Q. And as you sit here today, are you aware of 6 any -- are you aware of any cases that have not been 7 prosecuted for voter impersonation that should have 8 been? 9 A. No, sir. 10 Q. You were asked a question about the federal law 11 enforcement having the ability to prosecute voter 12 impersonation and investigating and prosecute voter 13 impersonation in the State of Texas. Do you recall that 14 question? 15 A. Yes, sir. 16 Q. Are you aware of any investigations conducted by 17 federal law enforcement between 2002 and 2012 that 18 involved voter impersonation? 19 A. Yes, sir, I'm aware that in the Dallas 2010 20 investigation that the FBI was also involved. 21 Q. And you've testified to that particular case in 22 2010, correct? 23 A. Yes, sir. 24 Q. In any event, would you agree that if there was 25 federal investigation in the State of Texas that they</p>



<p>233</p> <p>1 would communicate with the State of Texas Attorney 2 General before conducting an investigation in your 3 jurisdiction?</p> <p>4 MR. SWEETEN: Objection; it calls for 5 speculation.</p> <p>6 BY MR. GEAR:</p> <p>7 Q. Well, I mean, based on your experience as a 8 supervisor, a police officer, the supervisor of the SIU, 9 are you aware of any cases where the federal government 10 has investigated without first informing you of the 11 investigation?</p> <p>12 A. No, I'm not aware of any. I would hope that the 13 FBI would communicate with us. But I know that that's 14 not always the case.</p> <p>15 Q. Regarding your opinion that there are cases that 16 have gone undetected, which investigations, if any, are 17 you referring to and which witnesses are you referring 18 to that lead you to this opinion?</p> <p>19 MR. SWEETEN: Objection; compound.</p> <p>20 BY MR. GEAR:</p> <p>21 Q. Well, let's start with investigations. Are you 22 aware of any investigations that lead you to the opinion 23 that there are cases that have gone undetected?</p> <p>24 A. I believe that there was a case in Progresso 25 which is Hidalgo County.</p>	<p>235</p> <p>1 filed? 2 A. The witness who gave us that information had 3 inconsistent statements between interviews. 4 Q. Are there any other cases that you're basing your 5 opinion on, the opinion that there are cases that go 6 undetected? 7 A. Well, if I could go back to the Harris County 8 case from the 2008 primary election, which I previously 9 testified to. 10 Q. Can you tell me which case that is, who was 11 involved in that? 12 A. That would be Jack Carol Crowder. 13 Q. Okay. Mr. Crowder who was ultimately convicted? 14 A. Yes, sir. 15 Q. Based on a plea? 16 A. Yes, sir. The group that did the analysis 17 comparing Harris County voters to deceased voters had -- 18 and I don't remember the exact number, but I want the 19 say it was hundreds, if not thousands of voters who they 20 believed were deceased and who actually voted. 21 Q. Did you investigate that? 22 A. We could only -- we only have the resources to 23 investigate a small portion of that allegation. 24 Q. Other than Mr. Crowder, are there any other open 25 investigations on your spread sheet? Were there any</p>
<p>234</p> <p>1 Q. Does that appear on your spread sheet? 2 A. Yes. 3 Q. And can you show me where it appears on your 4 spread sheet? 5 A. I believe it appears on Page 3 of election code 6 referrals, office of the attorney general, August 2002 7 to present. It is approximately. 8 Q. What was the date of the alleged election? 9 A. It was the 2008 municipal election. 10 Q. What are the facts of that case? 11 A. This is a case that was referred to our office, 12 but also the local district attorney, I believe, got the 13 referral as well. 14 Q. Okay. And what are the facts of the case? 15 A. We had witnesses who informed us that some 16 suspects were outside of the polling place and that they 17 were handing out voter registration cards to vote, to go 18 cast votes in that election. 19 Q. Those were the allegations? 20 A. Those were the allegations. 21 Q. Did your office handle the investigation? 22 A. We investigated that, yes. 23 Q. What was the outcome of that investigation? 24 A. No criminal charges were filed. 25 Q. And what was the reason no criminal charges were</p>	<p>236</p> <p>1 other investigations based on what the group presented 2 on your spread sheet? 3 A. No. I mean. 4 Q. So you're saying hundreds if not thousands of 5 possible dead people that have voted, wouldn't that be 6 something that your office would investigate? 7 A. I only have a limited number of investigators and 8 the ability to investigate all of the names on that list 9 was not feasible. 10 Q. And isn't it a fact that there are people who 11 have passed away that are still on a voter registration 12 role and that's not -- that's because the roles have not 13 been updated to remove them? 14 A. One of the difficulties in the State of Texas is 15 that there are multiple jurisdictions that have voter -- 16 each county has their own voter registration department. 17 It could be based as an election office or it could be 18 based in a county clerk's office to handle the voter 19 registration. So there's 254 different ways. Not all 20 of them share the same systems. And it's my experience 21 as an investigator, that many of the counties, the way 22 they purge their roles of deceased voters is by looking 23 at obituaries. And in some cases they obtain the social 24 security death index, which could take months to do if 25 that's what they're relying on. So there could be a</p>



<p>237</p> <p>1 number of voters who are deceased. 2 Q. So ultimately, the answer to my question is yes? 3 A. Yes, sir. 4 Q. And the fact that there is a person who is 5 deceased on the voter registration role does not mean 6 that there is an incident of voter fraud, does not 7 necessarily mean that there's any type of fraud going 8 on? 9 A. Well, there's the opportunity for fraud. 10 Q. You said that you based your opinion that there 11 are undetected cases on speaking with witnesses, can you 12 name the witnesses who you're referring to? 13 A. No, I don't know their names today. 14 Q. And they would have been in connection with the 15 group that you've been speaking about? 16 A. No. I was mentioning witnesses down in the 17 Progresso case. 18 Q. And you've testified about that case, correct? 19 A. Yes, sir. 20 MR. GEAR: I don't think I have any further 21 questions. I am going to leave the deposition open. 22 MR. SWEETEN: I have a few follow-ups. 23 MR. ROSENBERG: If you're going to go I'll 24 go after you. 25 MR. SWEETEN: Okay. That's fine.</p>	<p>239</p> <p>1 MR. SWEETEN: Objection; calls for 2 speculation. 3 A. I don't believe just because it's prevalent that 4 it's easier to detect. 5 Q. (By Mr. Rosenberg) The more prevalent it 6 becomes, isn't this what happens in your police work, 7 that more people know about things, more people talk 8 about things. More people may know the person who walks 9 into a polling place, isn't that likely to happen if it 10 were very much more prevalent and than it is according 11 to your statistics? 12 MR. SWEETEN: Objection; assumes facts not 13 in evidence. Objection; calls for speculation. You can 14 answer. 15 A. I believe that even if it's more prevalent in a 16 jurisdiction like Harris County or Dallas County or 17 Bexar County that it would still be very difficult to 18 detect because the key to detecting voter impersonation 19 fraud is that someone in the polling place must be able 20 to identify the person whose name appears in the voter 21 registration certificate as the system is currently 22 designed. 23 Q. (By Mr. Rosenberg) And the more prevalent in 24 person voter fraud was, the more likely it would be that 25 someone would be identifying someone; isn't that</p>
<p>238</p> <p>1 MR. ROSENBERG: You go first. 2 BY MR. ROSENBERG: It's your turn and then I 3 get it back. Go ahead. 4 FURTHER EXAMINATION. 5 BY MR. ROSENBERG: 6 Q. Major, just because a crime may be difficult to 7 detect doesn't mean the crime has necessarily been 8 committed, does it. 9 A. I'm sorry. Would you repeat that one more time? 10 Q. Sure. Just because a crime may be difficult to 11 detect doesn't mean that it's being committed, does it? 12 A. That's correct. 13 Q. Okay. And also you testified in response to 14 questions from Mr. Sweeten about the fact that he didn't 15 have access to the data from other counties, correct? 16 A. That's correct. 17 Q. But you have no basis upon which to quantify any 18 additional instances of in person voter impersonation, 19 other than those which you testified today, correct? 20 A. I have no other means to identify additional 21 cases. 22 Q. And you would also agree, wouldn't you, that if a 23 crime, in fact, even if it were difficult to detect 24 became more prevalent, the more prevalent it became the 25 more easy it would be to detect it. Isn't that a fact?</p>	<p>240</p> <p>1 correct? 2 MR. SWEETEN: Same objection. 3 BY MR. ROSENBERG: 4 Q. Common sense tells you that. 5 A. I don't believe so because there is a limited 6 number of people inside the polling place. It's limited 7 to the number of election officials working there and 8 limited to pole watchers who are there. 9 Q. That's correct, but the more people there are the 10 more likely there are going to be connections. Isn't 11 that just a matter of common sense? 12 MR. SWEETEN: Same objection. And asked and 13 answered, by the way. 14 A. You're talking about polling places which process 15 thousands of people a day for elections. And absent 16 some sort of ID requirement, it would -- the likelihood 17 that they themselves know the voters representing 18 themselves is very slim. In fact, some elections 19 officials I don't think even necessarily work or live in 20 the precincts where they're assigned. 21 Q. (By Mr. Rosenberg) But the more it happens, the 22 more likely it is people would recognize people, isn't 23 that correct? 24 MR. SWEETEN: Asked and answered. 25 Objection.</p>



<p style="text-align: center;">241</p> <p>1 A. I don't believe that's case. 2 Q. (By Mr. Rosenberg) Let me ask another question. 3 You have no basis on which to say whether there's one 4 more instance of in person voter fraud or five more; 5 isn't that correct? 6 MR. SWEETEN: Objection; argumentative. 7 A. I believe with a fact that we have thousands of 8 people who are deceased on our pole lists, who every 9 year voter registration cards get mailed out, I believe 10 that's an incredible opportunity to commit fraud and 11 that the government has a responsibility to stop that. 12 Q. (By Mr. Rosenberg) But you have no basis upon 13 which to quantify it whatsoever? 14 MR. SWEETEN: Objection; asked and answered. 15 Objection; argumentative. 16 A. The basis I would have to argue that would be 17 that we know there are thousands and tens of thousands 18 of deceased voters on our roles in the State of Texas 19 and that opportunity exist. 20 Q. (By Mr. Rosenberg) But you cannot identify any 21 instances of voter fraud, other than those that you've 22 identified in your in person voter fraud, other than 23 those you've identified in your spread sheet? 24 MR. SWEETEN: Objection; asked and answered. 25 Go ahead. Objection; argumentative.</p>	<p style="text-align: center;">243</p> <p>1 overly broad, unduly burdensome. And then we also have 2 requested to the deposition notice. I'll also say that 3 we have offered the Department of Justice and we've 4 provided you the indictments, the convictions, we 5 provided you a stack of documents. You have not -- 6 we've also attempted to discuss with you and your office 7 in particular, the -- what it is specifically you're 8 looking for because if you're request really is that you 9 want every single case file underlying the 320 10 investigations on this spread sheet, it is an 11 extraordinarily difficult request based upon those 12 documents. I have not gotten any sense from you-all 13 that you want anything less than everything, and so 14 we've objected we're standing by that objection. We 15 stand ready to discuss the matter if with you. In light 16 of -- if you want to discuss this issue, we will do 17 that. But we've provided you -- and we've maintained 18 our objection throughout and we still maintain that 19 objection based upon the breadth of the request that 20 have been made. 21 MR. GEAR: And I respect that. And part of 22 that conversation has been with me. And part of that 23 conversation has essentially said -- asked me to 24 identify what I believe I need in response to the spread 25 sheet and I've said I could not do that. I believe I</p>
<p style="text-align: center;">242</p> <p>1 A. It's a very difficult crime to detect. 2 BY MR. ROSENBERG: Pass to Mr. Sweeten. 3 MR. SWEETEN: I have no further question 4 thank you. 5 MR. GEAR: Again, I'm going to hold this 6 deposition open. 7 MR. SWEETEN: Let's talk about that. What 8 you're talking about. What is your specific complaint, 9 Mr. Gear. 10 MR. GEAR: Well, my specific complaint is 11 that your client has testified on numerous occasions 12 during this deposition that there are other documents 13 that are available that may provide support to his 14 testimony. Those documents, as I know, have not been 15 produced. And there are multiple documents that we have 16 gone through. I believe I have a right to hold this 17 deposition open based on that. And that's what I intend 18 to do. 19 MR. SWEETEN: Well, let me give you a brief 20 response on the record. 21 MR. GEAR: Sure. 22 MR. SWEETEN: First of all, you requested 23 documents from us and I -- your request has been 24 objected to, both in the request to produce which was 25 answered on March 30th where we objected that it was</p>	<p style="text-align: center;">244</p> <p>1 said that both in writing and orally. And again, 2 there's no need to argue this much farther on the 3 record. 4 MR. SWEETEN: I agree. 5 MR. GEAR: But I intend on holding this 6 deposition open. 7 MR. SWEETEN: Okay. We can go off the 8 record. 9 (Deposition concluded)</p>



245 <p>1 CHANGES AND SIGNATURE 2 RE: STATE OF TEXAS VS. HOLDER 3 4 PAGE LINE CHANGE REASON 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	247 <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF COLUMBIA 3 STATE OF TEXAS) 4 VS.) NO. 12-CV-128 5) (DST, RMC, RLW) 6 ERIC H. HOLDER, JR.,) 7 In his official) Capacity as Attorney) 7 General of the United) States, ET AL) 8 ***** 9 CERTIFICATE FROM THE 10 ORAL DEPOSITION OF MAJOR FORREST MITCHELL JUNE 15, 2012 11 ***** 12 I, Janalyn Reeves, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition is a full, true and correct transcript; 13 That the foregoing deposition of MAJOR FORREST 14 MITCHELL, the Witness, hereinbefore named was at the 15 time named, taken by me in stenograph on June 15, 2012, the said Witness having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter reduced to typewriting by me or under my direction. The charge for the completed deposition is \$_____ due from Defendant. () That pursuant to the Federal Rules of Civil</p>
246 <p>1 I, MAJOR FORREST MITCHELL, have read the 2 foregoing deposition and hereby affix my signature that 3 same is true and correct, except as noted above. 4 5 MAJOR FORREST MITCHELL THE STATE OF TEXAS) 6 COUNTY OF _____) 7 Before me, _____, on this day 8 personally appeared MAJOR FORREST MITCHELL, known to me (or proved to me under oath or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed. 10 Given under my hand and seal of office this _____ day of _____. 11 12 NOTARY PUBLIC IN AND FOR THE STATE OF _____ 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	248 <p>1 Procedure, the Witness shall have 30 days after being 2 notified by certified mail, return receipt requested, by 3 the deposition officer that the original deposition 4 transcript is available in her office for review and 5 signature by the Witness and if any corrections made are 6 attached hereto; 7 () That by agreement of counsel, a reading condensed 8 copy of the deposition transcript along with the 9 full-size original changes and Signature Sheet has been 10 sent to _____ on _____ for review and 11 signature within 30 days and if any corrections returned 12 are attached hereto; 13 () That by agreement of counsel, the deposition 14 officer is instructed to release the original deposition 15 transcript to _____ on _____, for review and 16 signature, and the deposition officer is thereafter 17 released of any further responsibility with regard to 18 the original. 19 () That the Witness shall have thirty (30) days for 20 review and signature of the original transcript and if 21 any corrections returned are attached hereto. 22 () That the signed transcript () was () was not 23 received from the Witness within 30 days. 24 () That the examination and signature of the Witness 25 is waived by the Witness and the parties;</p>



